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COMMISSION ON HUMAN RIGHTS
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Item 9 of the provisional agenda

QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Written statement* submitted by Earthjustice Legal Defence Fund, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 0 3 6 0 *

ENG

SPRAYING TOXIC HERBICIDES ON RURAL COLOMBIAN AND ECUADORIAN COMMUNITIES

1. In the fall of 2000, the United States and Colombia began an intensive aerial herbicide application program to eradicate coca and poppy crops in drug-producing areas of Colombia as part of a greater anti-narcotics initiative called Plan Colombia. To date, the program is violating human rights of Colombian and Ecuadorian peasants and indigenous peoples living in the affected regions. The spray mixture and the manner in which it is applied have resulted in numerous health problems for residents, destruction of their food resources, contamination of their surface water, damage to surrounding wilderness areas, and tremendous deforestation resulting from relocation of spray victims and their farms that is beyond levels that the United States and Colombia claim results from coca and poppy production. Despite these harms, the United States and Colombia have provided only limited information about the program and have not conducted adequate health and environmental assessments. Consequently, these governments are depriving these individuals of their rights to a clean and healthy environment, health, life, sustenance, property, inviolability of the home and family, and access to information. Earthjustice requests that the UN Commission on Human Rights urge the United States and Colombia to halt immediately the aerial herbicide application program unless the program can be conducted without causing these harms and to encourage these governments to pursue alternative eradication methods. Earthjustice is pleased to provide the sources that support the claims made in this statement.

2. Reports to date indicate that the aerial herbicide application program has resulted in serious human rights abuses. Health harms from the spraying include gastrointestinal disorders (*e.g.* severe bleeding, nausea, and vomiting), testicular inflammation, high fevers, dizziness, respiratory ailments, skin rashes, and severe eye irritation. The spraying may also have caused birth defects and miscarriages. Moreover, the spraying has destroyed more than 1,500 hectares of legal food crops (*e.g.* yucca, corn, plantains, tomatoes, sugar cane, grass for livestock grazing) and fruit trees and has resulted in the death of livestock (*e.g.* cows, chickens). Regarding environmental harms, the spraying has parched wilderness areas and caused deforestation and loss of critical habitat to endangered bird species because spray victims relocate to farm their legal crops. Other environmental harms include contamination of surface waters and death of fish. In sum, the situation provides a clear example of the link between the environment and human rights—severe damage to the air, water, land and biodiversity caused by the spraying is violating various human rights.

3. The grave nature of these harms makes it essential that affected communities have complete information concerning what is being sprayed and how it is being sprayed so that they can determine how the program is harming their health, livelihood and environment and how they can avoid further injury. However, the United States and Colombia have yet to provide sufficient details about each of the components in the herbicide mixture and the precise manner in which it is applied. Earthjustice on behalf of Amazon Alliance requested such information in August 2001 from US agencies involved in the program but none have disclosed any to date.

4. Nevertheless, the limited information that the governments have provided suggests that the mixture being sprayed is toxic and is being applied inappropriately. According to a January 2001 report from the Bureau of International Narcotics and Law Enforcement Affairs at the US Department of State ("INL") to the US Congress, the herbicide mixture is composed of a US-approved product that contains glyphosate, water, and surfactants — the combination of which, according to Colombian and US sources, is an herbicide called Roundup-Ultra that the Monsanto

Company produces — as well as two additional substances manufactured in Colombia (COSMO FLUX-411f and COSMO-IN-D).

5. Other reports indicate that the mixture likely contains herbicide concentrations that are more than five times greater than levels for aerial application recognized as safe by the US Environmental Protection Agency ("EPA"). In the United States, such application, which surpasses the limitations on the EPA-approved label for Roundup-Ultra, would violate federal law. The United States and Colombia continue to assert that there are no human health risks associated with the program; yet, scientific studies that the United States and Colombia cite to demonstrate the safety of the eradication program all rest on the fact that the herbicide used is considered to be safe if label instructions are followed.

6. Moreover, the two additional substances (surfactants) that are added to increase adhesion and penetration of the herbicide into the plant leaf are more toxic than the active ingredient in the herbicide (*i.e.* glyphosate) that kills the plants. The United States and Colombia have attempted to conceal this point by focusing their limited public information on assertions that glyphosate is harmless.

7. Apart from these toxicity concerns are indications that application methods used contradict the manufacturer's recommendations and exacerbate human and environmental harms. For example, the Roundup-Ultra manufacturer recommends that aerial application not occur more than 10 feet above the top of the largest plants unless a greater height is required for aircraft safety. However, according to the Colombian antinarcotics police, the aerial herbicide application program flies aircraft 10-15 meters (approximately 25-30 feet) above the tops of the largest plants. This difference in altitude would be expected to greatly increase drift of the mixture to non-target areas and communities such as those in Ecuador.

8. Furthermore, neither government has conducted a satisfactory assessment of the potential human health and environmental impacts of the entire mixture used to spray coca plants despite monitoring requests from the UN Office for Drug Control and Crime Prevention. The only environmental assessment that the United States has conducted and made public involved providing EPA with the manufacturers' lists of ingredients of COSMO FLUX-411f and COSMO-IN-D and having EPA merely compare these substances to a list of approved food residues in the United States. EPA was not provided with and did not consider concentrations in the spray mixture as a whole, the amounts and concentrations to be applied, or the conditions for use. Based on this entirely inadequate assessment, INL nevertheless reported to the US Congress that the spray mixture and the manner in which it is sprayed are safe for the environment and human health. Since July 2001 and without success, Earthjustice has attempted to obtain from several US agencies, including INL and EPA, a more detailed environmental impact statement that INL reportedly prepared and made available at the Patricks Air Force Base in Florida to private military contractors. Unless the United States discloses this environmental impact statement and it is deemed sufficient, further environmental assessments are needed.

9. In the only health assessment that the United States has commissioned and made public, the Clinica Uribe Cualla S.A. of Colombia reviewed 21 out of 29 available written medical complaints made by Colombians in the community of Aponte, a part of the El Tablon Municipality in the Narino Department. However, Aponte residents made those complaints around the time of two poppy sprayings, not the more prevalent coca spraying. The mixture used to spray coca plants is nine times more concentrated than the mixture used to spray poppy plants. Given that difference

and the more widespread application of the coca spray mixture, assessments of coca spraying victims are needed.

10. Perhaps realizing this need, the INL, with the help of EPA and the US Center for Disease Control, is designing a new health study. However, that study raises additional human rights concerns because in its current form it would assess the health of 100 farmers in the Putumayo Department of Colombia before spraying begins and then reexamine those same 100 people after fumigation of nearby coca crops occurs. If the testing is conducted without obtaining the farmers' consent, the study would clearly violate their human rights. In fact, such nonconsensual testing would raise serious questions under current US law. Nevertheless, INL is moving forward.

11. To recap, the combination of (1) health, food resource, and environmental impacts to Colombians and Ecuadorians, (2) the toxicity of the spray mixture and the failure of the United States and Colombia to instruct sprayers to observe health and environmental safety recommendations, (3) the failure of the United States and Colombia to disclose sufficient information about the mixture and its application, (4) the failure of the United States and Colombia to conduct sufficient health and environmental assessments, and (5) the potential human rights abuses that may result from future health studies, clearly places the United States and Colombia in violation of the rights of Colombians and Ecuadorians to a clean and healthy environment, health, life, sustenance, property, privacy, and access to information. Consequently, the UN Commission should urge the United States and Colombia to discontinue the aerial herbicide application program and seek alternative eradication methods.

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
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ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by South Asia Human Rights Documentation Centre, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *0002010362*
ENG

The legally identified enemies of Bangladesh: Reply to the "Comments of the Government of Bangladesh on the written statement by the South Asia Human Rights Documentation Centre (SAHRDC) contained in document E/CN.4/2000/NGO14 of the 56th Session of the Commission on Human Rights" (E.CN.4/2001/18)

At the 56th Session of the Commission on Human Rights, SAHRDC submitted a written statement (E/CN.4/2000/NGO14) on the plight of the legally identified enemies in Bangladesh. Hundreds of thousands of persons including those belonging to the minority Hindu community as well as indigenous peoples, have been dispossessed of their properties under the Vested Properties Act, a reincarnation of the Enemy Properties Act passed by the former Government of East Pakistan.

The Government of Bangladesh submitted its reply (E.CN.4/2001/18) at the 57th Session of the CHR after examining the SAHRDC document. The Government however failed to respond to specific concerns raised by SAHRDC. These included a case of land-grabbing referred to in the statement. Rather, it used terms such as "baseless," "seemingly tendentious," and "factually inaccurate" to describe SAHRDC's statement.

SAHRDC is aware of the use of such defensive phraseology by many governments. The following reply to the Comments of the Government of Bangladesh, it is hoped, will determine which statement is "baseless, seemingly tendentious and factually inaccurate."

Para 1:

The Government of Bangladesh states: "The very title of the SAHRDC statement, "violation of economic, social and cultural rights of the legally identified enemies of Bangladesh" is misleading. There is no legally identified enemies of Bangladesh, legally or otherwise. The assertion of SAHRDC is baseless and tendentious."

The existence of 'enemies' is implicit in the very title of the "Enemy Properties Act" passed by the then Government of Pakistan and the Enemy Property (continuance of Emergency Provisions) (Repeal) Act, 1974 of the Government of Bangladesh. As the Government of Bangladesh states in para 3: "Following the emergence of Bangladesh as an independent and sovereign country in 1971... All the "enemy properties" which were vested in the former Government of East Pakistan were declared as vested in the Government of the People's Republic of Bangladesh (vesting property and assets) order, 1972 (P.O.No. 29/72) and the Enemy Property (continuance of Emergency Provisions) (Repeal) Act, 1974."

The United Nations Special Rapporteur on Religious Intolerance, Abdelfattah Amor after his visit to Bangladesh from 15-24 May 2000 stated in his Interim Report to the Millennium Session of the General Assembly (A/55/280/Add.2 dated 9 August 2000):

> "31. After Bangladesh won independence from Pakistan, the President of Bangladesh, in his Order No. 29 of 1972, changed the nomenclature to Vested Property Act, without altering the content of the law."

The definition of "enemy" as provided under the Defence of Pakistan Rules is still applicable. Under Section 3(b)(i) of the "Enemy Property (Continuance of Emergency Provisions (Repeal) Act 1974 (Act XLV of 1974) adopted by the Government of Bangladesh, "enemy property" and "enemy firms" are defined as below:

> "Enemy property" and "enemy firms" shall have the same meaning as are respectively assigned to them in the Defence of Pakistan Rules continued in force by the said Ordinance."

Clearly, "legally identified enemies" do exist in Bangladesh.

Para 4:

In para 4, the Government of Bangladesh states: "No property of any bonafide Bangladeshi Hindu National has been enlisted as vested property since independence of Bangladesh till date."

The assertion of the Government of Bangladesh is untrue.

The Special Rapporteur on Religious Intolerance stated in his report: "Furthermore, to this day, interest groups and individuals continue to appropriate property belonging to the Hindu community, and indeed to do so with the complicity of the authorities and of influential people. In a significant number of cases, Hindus are dispossessed of their property, even when they are the legal owners of such assets." (Para 31, page 7, A/55/280/Add.2)

The Ain O Salish Kendra (Law and Arbitration Centre), a Bangladeshi NGO, in its report, 'Power, Safety and the Minorities: A Brief Report,' in May 2000 stated:

> "In 1999, about 29 cases of forceful occupation of land and property of the Hindu community have been reported in different newspapers. These include their homesteads, farmlands and religious places. Influential political forces and their goons have also occupied many of the properties listed as vested property. In 1999 in the Sunamgonj district out of 21,000 acres of vested property land 16,000 acres have been illegally occupied (*Bhorer Kagoj*, 17.5.1999); likewise in the Mymensingh district out of 29,722 acres of vested property land, 28,000 acres of land and 300 houses (vested property) have been occupied by one influential person (*Bhorer Kagoj*, 12.5.1999)... Statistics as cited in the ASK Human Rights Report (p.193-194) show that in 1995, 72 per cent of all vested property was acquired by members of Bangladesh National Party (BNP); and in 1998, 44 per cent was acquired by the Awami League and 32 per cent by the BNP." (http://www.dailystarnews.com/200005/26/n0052609.htm#BODY2)

Para 5:

In para 5, the Government of Bangladesh states, "Vested property verification committees were formed in 1993 at Thana, Pourashava and City-corporation levels with a view to detecting fraudulent and wrong enlistment of properties and illegal possession thereof. The verification was not intended to put the Hindu minority community to harassment."

SAHRDC was surprised to note that the Government of Bangladesh has misquoted the direction of its own Law Ministry (Memo No Bhu/7-5/Arpita(Nitimala)/117/42(Angsha)/638(61) dated 4 November 1993.) The ministry's order clearly stated that it was also to "determine whether there are other enemy properties." The order further states:

> "Ga) If the Committees find out any concealed properties it will investigate into the matter and bring it to the notice of the Government..."

It was under the above direction that property belonging to 61 Hindu families in Ashefpur and Chawkjara village of 14 Ashefpur Union, and in Ganda Gram of 10 Sultanganj Union under Bogra Sadar police station were identified as Enemy Properties.

Para 6:

In para 6, the Government of Bangladesh states that it has examined the report by the Association for Land Reform and Development (ALRD) and has highlighted the shortcomings of the report.

SAHRDC is aware of the assumptions made by ALRD in respect of the missing Hindu population. In SAHRDC's view ALRD's samples are not confusing but indicative of the intensity of the problem. Moreover, ALRD is not the only NGO to have attempted to record cases of dispossession. According to the Ain O Salish Kendra:

> "The 1991 census estimated that the Hindu population has declined by 0.3 per cent since 1974. Fear of loss of property, under the Vested Property Act 1974, or fear of communal violence has induced the migration of Hindus from the country." (Human Rights in Bangladesh 1998, ASK, Dhaka 1999, p.192).

SAHRDC stands by the assertion made in its written statement (E/CN.4/2000/NGO14): "Holding elections is not the only yardstick of measuring democracy or health of a society. If gross violation of the economic rights of the Hindu minority is a yardstick, tyranny of the majority rules the roost in Bangladesh. Any society which claims itself to be civil and democratic, should have no place for such a discriminatory Act..."

The wave of systematic attacks on the minority Hindu community across the country in the weeks following the 1 October 2001 General Elections is reflective of SAHRDC's assertion. By 8 October 2001, at least 30 people had been killed and more than 1,000 others injured. Their houses were torched, ransacked and in many cases seized, women were raped.

A large number of Hindus fled their homes, becoming internally displaced. Many others fled to the Indian states of Assam, Tripura and West Bengal.

On 24 November 2001, the High Court ordered the Government to explain why it had not taken steps to stop post-election attacks and harassment of minorities. In response to a petition filed by a rights organisation, the High Court on 27 November 2001 further ordered the Government to investigate the incidents and submit a report by 15 January 2002.

The Government's response to the monitoring of atrocities on minorities has also been characteristically brutal. Mr Shahriar Kabir, an independent documentary filmmaker, was arrested on 22 November 2001 at on his return from Kolkata, India. He was later served a notice under the draconian Special Powers Act. Mr Kabir had gone to India to investigate the condition of Bangladeshi refugees who had fled to India and had collected evidence of their plight.

If the prosecution of Mr Kabir is any indication, the implementation of a egulation – and a flawed one at that – such as the Vested Property Return Bill passed in the Bangladesh parliament on 9 April 2001, will also remain a mirage.

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CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: STATES OF EMERGENCY

Written statement* submitted by South Asia Human Rights Documentation Centre, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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GE. *200201036 4*
ENG

Undeclared state of emergency in India

India is awash in legislation that restricts fundamental liberties. Laws purporting to safeguard national security and public order have been employed to counter ambiguously defined threats. Applied over large swathes of the country – from the state of Jammu & Kashmir in the north to several states in the northeast as well as Andhra Pradesh in the south – these Acts contain provisions that are incompatible with the principles that form the basis of a democratic State.

Preventive detention, extraordinary powers to the police and security forces to arrest, detain, and even shoot suspects – are measures that normally follow the proclamation of a state of emergency, which, in turn, is justifiable only in the face of threats to the life of a nation. The extensive nature of these laws has ensured that virtually the entire country remains in a state of undeclared emergency.

Some of the major legislative measures are summarised below:

The Disturbed Areas Act is in effect in the states of Assam, Nagaland, Manipur, parts of Tripura, Jammu and Kashmir, Andhra Pradesh, and in two districts of the state of Arunachal Pradesh. It gives police extraordinary powers of arrest and detention.

The National Security Act (NSA) of 1980 provides for detention of a person "with a view to preventing him from acting in any manner prejudicial to" various State objectives including national security and public order. The maximum period of detention is 12 months. The Act limits the powers of the court to review detention orders. And while it requires the Government to refer all cases to an Advisory Board consisting of High Court judges within three weeks of the detention, it does not permit legal counsel to appear before the Board on behalf of the detenu. The proceedings of the Advisory Board are moreover closed to the public and its report to the Government is confidential. Finally, it gives legal immunity to any government officer acting in good faith in pursuance of the Act. At the end of 1997, according to Government records, approximately 500 persons were in detention under the NSA.

The Jammu and Kashmir Public Safety Act (PSA) of 1978 applies similar procedures to the state of Jammu and Kashmir, allowing detention without trial for two years. According to Government records, updated as far as August 1997, nearly 1,600 persons were being held in five detention centers in Jammu and Kashmir as compared to 2,070 in 1995. Of these, 1,298 persons were held under the PSA.

The Armed Forces Special Powers Act of 1958 remains in effect in Jammu and Kashmir, Nagaland, Manipur, Assam, and parts of Tripura. It gives the Central Government the power to declare any State or Union Territory a disturbed area, allows security forces to fire at any person if it is considered "necessary for maintenance of law and order." They can also arrest any person "against whom reasonable suspicion exists" with no obligation to inform the detainee of the grounds for arrest. Finally, security personnel are given immunity from prosecution for any acts committed by them in relation to the Act.

The Prevention of Terrorism Ordinance (POTO) of 2001 is the latest in the series of measures that often cause more harm than the threat they are meant to tackle. POTO provides for the holding of an accused person for a prolonged period of detention for up to 180 days without charges, and effectively subverts the cardinal principle of the criminal justice system – the presumption of innocence – by putting the burden of proof on the accused, withholding of the identity of

witnesses, making confessions made to the police officer admissible as evidence, and giving the public prosecutor the power to veto bail.

Certain rights must be fully respected at all times and under all circumstances. These include the right not to be arbitrarily deprived of life, the right to freedom from torture, the right to a fair trial and the right to protection against discrimination. The Acts listed above lack the safeguards needed to ensure the protection of these basic rights.

India is a party to the International Convention on Civil and Political Rights (ICCPR) and is therefore obliged to abide by its provisions. Furthermore, any derogation from its provisions is only permissible under three conditions. Firstly, it is only "in time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed" that states may derogate from their obligations under the ICCPR. Also, such derogation must be "strictly required by the exigencies of the situation" and cannot be inconsistent with other international law obligations. The AFSPA, for example, was enacted without such an official proclamation of emergency and goes beyond the requirements of the situation. No official proclamation was made with regard to the application of the NSA or POTO either.

Secondly, there can be no derogation from articles 6, 7, 8 (paragraphs 1 and 2), 11, 15, 16 and 18. The AFSPA violates three of these - Article 6 guaranteeing the right to life and prohibiting the arbitrary deprivation of life, Article 7 prohibiting torture and Article 8 prohibiting forced labour.

Certain elements contained in this Acts violate other key provisions of the ICCPR. Article 4 of POTO violates Article 14 (2) of the ICCPR which states that any person "charged with a criminal offence to be presumed innocent until proven guilty." POTO allows detention for a minimum of one year, and it is for the accused to prove his or her innocence, which is made more difficult by the courts' powers to convict a person using only the testimony of the arresting police officers.

The NSA also derogates from rights guaranteed under the ICCPR, in particular Article 9 which provides that anyone who is arrested must be informed of the reasons for the arrest and the charges against him. Under Section 8 (2) of the NSA, the authorities may not disclose the grounds on which the person has been detained. This is also in direct contravention of article 14 (3) of the Covenant.

Thirdly, under article 40 of the ICCPR, any state which derogates from the Covenant must inform the other States parties immediately, through the Secretary-General. It must also give reasons for the derogation and the date on which the derogations are terminated. India has not met this obligation with regard to any of the above legislation.

In its Concluding Observations after having considered India's Third Periodic Report in July 1997, the UN Human Rights Committee expressed its concern "at the continuing reliance on special powers under legislation such as the Armed Forces Special Powers Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious human rights violations, in particular with respect to Article 6,7,9 and 14 of the Covenant, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups." The Committee also expressed regret that by applying legislation such as the AFSPA, the State party was "in effect using emergency powers without resorting to Article 4, paragraph 3, of the Covenant." It recommended the close monitoring of the application of "these emergency powers" to ensure strict compliance with the provisions of the Covenant.

The September 11 attack in New York prompted many countries to adopt anti-terrorism policies and legislation. In this context, the High Commissioner for Human Rights, Ms Mary Robinson, has pointed to the need to ensure that States conform to the standards set out in the ICCPR dealing with emergency measures. Such measures, the High Commissioner added, may be justified in principle in international law, provided they are demonstrated to be necessary and there are effective safeguards. However, she stressed, they may also require notice of derogation under the Covenant.

The need to strike a balance between personal freedoms and national security will and must remain the major concern of States while framing policies and legislation. A good yardstick by which to measure State action is the set of standards laid down in the ICCPR. India, along with other countries, must be reminded of its obligation to conform to these standards. It must also submit its actions to scrutiny. That, as the High Commissioner pointed out, is the sign of a healthy democracy.

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SPECIFIC GROUPS AND INDIVIDUALS: MASS EXODUSES AND DISPLACED PERSONS

Written statement* submitted by South Asia Human Rights Documentation Centre, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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GE. *200201036 6*
ENG

Australia's flight from the Refugee Convention

In December 2001, the United Nations celebrated the 50th Anniversary of the United Nations 1951 Convention Relating to the Status of Refugees. However, the refugees have little to rejoice about. Australia's treatment of refugees, which the UN High Commissioner for Refugees, Ruud Lubbers termed as resorting to the "law of the jungle" and sending asylum-seekers "into orbit", exemplifies the predicament of the asylum seekers and refugees.

The case of the Norwegian freighter MV Tampa is a case in point. On 26 August 2001 a Norwegian freighter – the MV Tampa – rescued 433 asylum-seekers from a sinking Indonesian vessel; it housed the refugees for eight days while both Australia and Indonesia refused to accept them. An initial action of the Australian Government was to order SAS troops to board the Tampa in order to prevent it from docking on Australian soil.

Following a legal battle in the Tampa case, the Australian Federal Parliament debated the adoption of six bills regarding immigration issues. The Government justified the introduction of these legal measures by reference to Australia's self-proclaimed increasingly generous interpretation of the 1951 Refugee Convention. These measures represent a consistent and pernicious trend in refugee protection. The trend includes: limiting access by asylum-seekers to refugee status determination procedures – including the right to appeal, restrictive legal and administrative interpretations being given to relevant terms under the Refugee Convention, the use of administrative detention, visa restrictions, and the application of 'first country of asylum' and the 'safe third country' principles.

A package of six asylum-related bills passed through parliament during the week of 17 September 2001. Four have proved particularly contentious in terms of their human rights implications for 'illegal arrivals.'

Under the Migration Legislation Amendment Act (No 6), 2001 (MLA Act), the Australian Federal Court and the Refugee Review Tribunal are provided with artificially circumscribed definitions of the terms "refugee", "persecution" (as grounds for the granting of refugee status), "serious harm" and "membership of a particular social group" (as grounds for persecution) which limit their usage of these terms to a narrowly described scope of cases. Further exclusionary features of the MLA Act are the non-extension of refugee status from a child to its parents and the lowering to non-political crimes like serious property damage of those criteria that disqualify refugees for protection. Specifically, non-political crimes such as serious property damage will now render a person ineligible for refugee status and expose him or her to repatriation. Most fundamentally, the MLA Act undermines the principle of non-refoulement, the bedrock of the 1951 Refugee Convention and customary international law.

The Border Protection (Validation and Enforcement Powers) Act 2001 (BPB Act), introduces provisions regarding the detention of persons found on ships or aircraft, clarifies the powers of the arresting officer and specifies a new search power. Vessels may be prevented from arriving in or removed from Australian territorial waters – using "reasonable force" if necessary – if suspected of carrying "unlawful" immigrants. The BPB Act specifically excludes such people from being defined as being held in "detention", thereby effectively removing the opportunity for such people to resort to regular protection visa-claiming procedures. The BPB Act also retrospectively protects all action initiated by the government – from 27 August 2001 onwards – with respect to "vessels carrying unlawful arrivals". The Australian Government's actions with relation to the Tampa have accordingly been vindicated.

The Migration Amendment (Excision from Migration Zone) Act 2001 (MAB Act) excises certain territories from the Australian migration zone. The excised territories include the Christmas Islands, the Ashmore and Cartier Islands, the Cocos (Keeling) Islands and any other external territory, island or Australian sea or resource installation; in other words, those places that asylum-seekers arriving by boat are most likely to reach first. Under the MAB Act, people reaching Australian soil on "excised territory" are precluded from the regular process of seeking refugee status. Further, they are denied recourse to the kind of legal protection that would be required in order for them put their cases for refugee status.

Supplementing the BPB Act, the Migration Amendment (Excision from Migration Zone) (Consequential Provisions) Act 2001 (MAB II Act) gives discretionary power to officers to detain non-citizens entering or seeking entry into an "excised offshore place" if they are suspected "unlawful non-citizens". Such people may be taken to a declared country "in certain circumstances", and the MAB II Act specifies that "this does not amount to immigration detention". The Act again bars access to certain legal rights related to the entry, status and detention of non-citizens who enter Australia at an "excised offshore place". A "declared country" needs to satisfy certain itemised criteria for the Minister for Immigration but the country does not necessarily have to be a signatory of the Refugee Convention.

Another critical part of the MAB II Act deals with a "hierarchy of rights" which is "intended to deter further movement from, or the bypassing of, other safe countries". According to these provisions, "unauthorised arrivals" who may be fleeing persecution but who have bypassed other safe countries are only eligible for successive temporary protection visas and are therefore prevented from applying for any of the key protection, refugee and humanitarian visas.

While the Australian Government claims that the amendments "restore the application of the Refugee Convention to its proper interpretation", in truth, many changes undermine the Refugee Convention. Whether this narrowing of the domestic parameters of the Refugee Convention has been motivated by a desire to curb judicial activism in asylum cases or by November 2001 election appeal to xenophobia is moot. What is clear is that the provisions of the new Acts are unlikely to 'deter' unlawful asylum-seekers from trying to reach a place where they expect to escape persecution. As noted by Professor William Maley of the Refugee Council of Australia, "[t]hose being smuggled don't know about 'migration zones', and those who run the [trafficking] networks are unlikely to care."

According to the Australian Immigration Ministry, 1,847 "unauthorised arrivals" reached the Australian migration zone at off-shore territories between August 2001 and 2 January 2002; 599 persons were intercepted at sea and returned to Indonesia. This measure constitutes categorical denial of refugee claim. The powers of the Minister for Immigration to grant access to protection visas and to permanent residence on a discretionary basis is no substitute for the right to have one's claim for refugee status heard and determined by proper legal procedure and according to international legal obligations. UNHCR ExCom Conclusion No. 30 (iii) (1983) recommends that even an unsuccessful applicant for refugee status "should be enabled to have a negative decision reviewed before rejection at the frontier or forcible removal from the territory". When this recommendation is made for persons whose claim to refugee status has been effectively rejected, how much more stringently should this requirement hold for an applicant the merits of whose case have not even been considered yet?

A ministerial meeting to celebrate the 50th Anniversary of the 1951 Refugee Convention on 13 December 2001 clearly set out the limits of acceptability of any national policy on refugees and

asylum-seekers in a Declaration reaffirming the commitment of signatory States to the 1951 Refugee Convention. An Agenda for Protection called (amongst other things) for an emphasis on the implementation of 1951 Convention and the 1967 Protocol. However, Australian Immigration Minister Philip Ruddock stated that both the Declaration and the Agenda for Protection do not preclude debate on and an eventual implementation of a "new approach to handle the phenomenon of large-scale economic migration."

Australia – which used to preach human rights to the undemocratic States in the Asia Pacific region, is increasingly following their lead. North Korea withdrew from the International Covenant on Civil and Political Rights (ICCPR) and the Convention on the Rights of the Child (CRC) following an August 1999 UN Sub-Commission resolution calling on North Korea to cooperate with the United Nations procedures. In March 1999, Australian Foreign Minister Alexander Downer similarly questioned the credentials of independent experts of the CERD Committee and Australia conducted an internal evaluation of its engagement with the United Nations bodies with the expressed belief that "Australia gets a better deal from the UN treaty committees." Australia's "tough stance" on asylum seekers again smacks of an unwillingness to cooperate – this time with the international regime for refugee protection.

The distinction between the preacher and the preached has become blurred.

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 17 (b) of the provisional agenda

PROMOTION AND PROTECTION OF HUMAN RIGHTS: HUMAN RIGHTS DEFENDERS

Written statement* submitted by South Asia Human Rights Documentation Centre, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201036 8*
ENG

In defence of Human Rights Defenders

The South Asia Human Rights Documentation Centre (SAHRDC) has perused the report (A/56/341) of the Special Representative of the Secretary General on Human Rights Defenders presented to the 56th Session of the General Assembly. SAHRDC is aware that Special Rapporteurs/Special Representatives are not obliged to provide specific information about the violations cited in their reports. However, many Rapporteurs/Representatives do, and SAHRDC believes that the report of the Special Representative on Human Rights Defenders could have been more informative – and effective – had it been more explicit. The General Assembly and the world community at large must know the identities of human rights defenders who are under attack as well as the States or State agencies that have failed to take action against such attacks.

Human rights defenders continue to face repression across Asia.

The Government of India, for example, has been seeking to replace the draconian Foreign Contribution (Regulation) Act, 1976 with an even harsher Foreign Contribution (Management and Control) Bill. The Bill is aimed ostensibly at curtailing terrorist and religious conversion activity by regulating the acceptance and utilisation of foreign contributions or foreign hospitality by individuals, associations or companies.

Government guidelines require NGOs to register themselves and submit to regular audits. While the Government has a legitimate interest in holding NGOs accountable for financial or other wrongdoing, normal regulatory and criminal justice procedures provide sufficient institutional resources to accomplish this task. The Foreign Contribution (Management and Control) Bill however places NGOs under the control of the Intelligence machinery of the Ministry of Home Affairs rather than the Ministry of Finance.

The Bill also reportedly provides for the Central Government's supervision of NGOs apart from state and district-level oversight – a move that is widely expected to result in the targeting of organisations and institutions working on issues related to religious and linguistic minorities.

The proposed law's deliberately vague wording further raises the chances of arbitrary denial of registration to NGOs.

Furthermore, it can be deduced from the official figures on the receipt of foreign contributions that the Government's supporting argument for the proposed Bill – that foreign contributions benefit mainly religious groups engaged in aggressive proselytisation activity and militant insurgent outfits – does not hold. The figures for 1998-99 show that the southern states received the largest part of the contributions – more than double the amount received by the Northern states, well more than triple the western states' share, and five-and-a-half times the total of the eastern and central states' receipts. Projects on health and family welfare, rural development and help for the poor, aged and destitute, rather than those on proselytisation or conversion, attracted the largest share of the incoming contributions. Insurgent organisations, as the Government of India is only too well aware, do not use formal banking channels.

Such politicisation of the law and the law-making process must be condemned. By denying access to foreign contributions and funding to human rights NGOs, India finds itself in violation of Article 13 of the Declaration on Human Rights Defenders. While the need for government supervision of NGO activity readily furnishes grounds for legal regulation and facilitation of

NGOs' operations, legislation regarding NGOs must not become a pretext for intimidation and harassment.

India's hostile treatment of NGOs however is subtle in comparison to the manifestly physical nature of State attacks on human rights activists in Bangladesh.

Shahriar Kabir – a Bangladeshi journalist, writer, documentary film maker and minority rights advocate – was arrested under Section 54 of the Code of Criminal Procedure and taken into Special Branch police custody on 22 November 2001 on his return to Dhaka from West Bengal, India. Mr Kabir is the Bangladesh representative of the International Institute of Social History and acting president of the South Asian Coalition against Fundamentalism. He had gone to India to investigate the condition of Bangladeshi refugees who had fled to India to escape the violence that followed the 1 October 2001 national elections in Bangladesh. He was charged with treason, allowed to see his lawyers only in the presence of intelligence agents and denied medical treatment for severe chest pain despite court orders. The police seized his passport, five video cassettes, 13 audio cassettes, three CDs, a film and a camera. Mr Kabir's detention was justified by the government of Bangladesh on the grounds of a later finding "that the videos contain objectionable and misleading statements that are detrimental to communal harmony and subversive of the state."

On 25 November 2001, Mr Kabir was detained for one month on informal charges of 'anti-state activities on the basis of intelligence reports and at the instruction of higher authorities' under the Special Powers Act (SPA) of 1974. No formal charges were filed. Subsequently, the arrest was extended and bail was refused. On 1 December 2001, an argument for the legality of Mr Kabir's detention was sought from the government by the Bangladesh High Court. Mr Kabir alleged that he had been tortured in custody. The SPA, frequently utilised against political opponents and human rights advocates, allows for preventive detention and for the abridgement of the right to freedom of expression. The High Court recently ruled Mr Kabir's detention illegal but said it did not have the power to grant bail. Mr Kabir's case constitutes a clear violation of Articles 3 and 6 (a) and (b) of the Human Rights Defenders Declaration.

Since the 26 November 2001 declaration of a nationwide emergency and the deployment of the army in Nepal, dozens of people, including lawyers, students and teachers, have been arrested throughout the country on suspicion of being members or sympathisers of the Communist Party of Nepal (Maoist). Fundamental rights guaranteed in the Constitution have been suspended. While the right of habeas corpus has not been suspended, there are reports that lawyers are reluctant to exercise this right for fear of arrest under the Ordinance on charges of supporting "terrorism."

Kush Raj Shahi from Kalikot district and Bishnu Pokhrel of Sankhuwasabha district, who report for the Human Rights Yearbook of the Informal Sector Service Centre (INSEC) based in Kathmandu, were threatened by security personnel while collecting information on human rights abuses. Mr Pokhrel was also arrested and severely beaten on 9 January 2002, a day after he had collected information and photographs on the arbitrary arrest and torture of four persons by the Nepalese army at an army camp in the Khandbari municipality of Eastern Nepal.

Further afield in South East Asia, the transition from one- to multi-party rule appears to have made little difference to the treatment of human rights defenders.

In August 2001, the Chairman of the Commission for Missing Persons and Victims of Violence (Kontras) in Indonesia, Munir, narrowly escaped a bomb blast directed at him. The attack was

reportedly intended to dissuade him from pursuing his work on cases of impunity in the wake of explosions in Jakarta and other cities.

Professor Teungku Dawood, Director of the Syiah Kuala University, Aceh, was shot dead in his car by two unidentified men on a motorbike on 7 September 2001. Professor Dawood was an activist working for peace and reconciliation in Aceh. He was also chairman of the Golkar Party and head of the Aceh branch of Muhammadiyah, the country's second-largest Muslim organisation. Exercising his rights under Article 8 (2) of the Human Rights Defenders Declaration, he had proposed a greater role for the Syiah Kuala University in conflict resolution measures involving Indonesian forces and pro-independence guerillas of the Free Aceh Movement.

Theys Hiyo Eluay, Chairman of the Papuan Presidium Council, was abducted, mistreated and assassinated on 10 November 2001. His driver, a witness to the crime, disappeared, allegedly kidnapped by security forces. The Papuan Presidium Council, under Chairman Theys' leadership, had issued a statement on 20 October 2001 rejecting the special autonomy law for Papua and calling for dialogue with the Indonesian government. It was alleged that Mr Theys' murder was meant to provoke conflict along the lines of the political upheaval in Aceh.

These cases from across Asia are merely illustrative of the general political climate that is not merely unfriendly towards human rights defenders and their work but greatly increases the personal risk faced by them. It is a climate in which their human rights, and their rights as human rights defenders in particular, are violated almost as a matter of course. Human rights defenders are not enemies of the state – they must not be permanently suspected or treated as such.

The distinction between the preacher and the preached has become blurred.

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EFFECTIVE FUNCTIONING OF HUMAN RIGHTS MECHANISMS: NATIONAL INSTITUTIONS AND REGIONAL ARRANGEMENTS

Written statement* submitted by South Asia Human Rights Documentation Centre, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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GE. *200201037 0*
ENG

Reluctant Referee: The National Human Rights Commission of India

Since the Vienna World Conference on Human Rights, many governments in the Asia-Pacific region have established national human rights institutions. Many are in the process of establishing one. A decade later, however, there is little to show for the effort. The established NHRIs have not demonstrated the required level of independence and forthrightness, and in some cases have even failed to fulfill basic functions such as enabling the implementation of judicial orders.

The National Human Rights Commission of India (NHRC) is a case in point.

On 2 November 1995, the NHRC filed a writ petition (No. 720 of 1995) with the Supreme Court of India against the State Government of Arunachal Pradesh for its repeated failure to respect the directives of the NHRC to protect the lives and liberties of the Chakmas and Hajongs. The Chakmas and Hajongs who had migrated to India in 1964 from then East Pakistan (now Bangladesh) have been facing institutionalised discrimination since their arrival. After coming to power in 1980, Arunachal Pradesh Chief Minister Gegong Apang barred the Chakmas and Hajongs from holding government jobs. In the 1990s, with his hold on the office of Chief Minister weakening, Apang attempted to stir up public hostility against the Chakmas to gain an edge over his political opponents. Through the use of administrative orders, Apang divested the Chakmas and Hajongs of basic facilities, and allowed the members of the All Arunchal Pradesh Students Union (APSU), an organisation which opposes granting of citizenship to the two communities, to launch violent attacks against them with impunity. Apang also mobilised the political parties in the state to demand the expulsion of the two communities from the state. In the face of the State Government's consistent flouting of NHRC directives, the NHRC approached the Supreme Court.

On 9 January 1996, the Supreme Court gave its judgement in the case of NHRC vs State of Arunachal Pradesh, issuing the following orders:

> - the first respondent, the State of Arunachal Pradesh, shall ensure that the life and personal liberty of each and every Chakma residing within the State shall be protected and any attempt to forcibly evict or drive them out of the State by organised groups, such as the AAPSU, shall be repelled, if necessary by requisitioning the service of para-military or police force, and if additional forces are considered necessary to carry out this direction, the first respondent will request the second respondent, the Union of India, to provide such additional force, and the second respondent shall provide such additional force as is necessary to protect the lives and liberty of the Chakmas;
>
> - except in accordance with law, the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein;
>
> - the quit notices and ultimatums issued by the AAPSU and any other group which tantamount to threats to the life and liberty of each and every Chakma should be dealt with by the first respondent in accordance with law;
>
> - the application made for registration as citizen of India by the Chakma or Chakmas under Section 5 of the Act, shall be entered in the register maintained for the purpose and shall be forwarded by the Collector or the DC who receives them under the relevant rule, with or without enquiry, as the case may be, to the Central Government for its consideration in

> accordance with law; even returned applications shall be called back or fresh ones shall be obtained from the concerned persons and shall be processed and forwarded to the Central Government;
>
> - while the application of any individual Chakma is pending consideration, the first respondent shall not evict or remove the concerned person from his occupation on the ground that he is not a citizen of India until the competent authority has taken a decision in that behalf;

The intervention with the Supreme Court has been touted by the NHRC as "successful." However, five years after the judgement, not a single citizenship application has been processed. Instead, the Chakmas and Hajongs continue to be subjected to intimidation, harassment, torture and other abuses. They have been prevented from selling their products in the market. Members of the Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (CCRCAP) were beaten and falsely implicated in criminal cases. The District Commissioners continue to refuse to accept their citizenship applications, in clear contempt of the Supreme Court order.

The Chakmas and Hajongs have therefore submitted their applications to the Central Government of India. Over 4,000 applications have been submitted since 1997. Not a single application has been processed by the Central Government.

In addition to the Chakmas and Hajongs who arrived in 1964, there are nearly 35,000 persons from both communities who were born in India after 1964 and have been declared as citizens by birth under section 3(1)(a) of the Indian Citizenship Act 1955.[1] However, when they tried to register in the electoral rolls, the State Government officials refused to accept their applications.

The CCRCAP at this point approached the Ministry of Home Affairs. The ministry indicated that the Election Commission had been requested to include all legitimate Indian citizens in the rolls. The Election Commission however took no action. The People's Union for Civil Liberties (PUCL) and the CCRCAP filed a writ petition before the Delhi High Court in this regard (CWP no. 886 of 2000). In its judgement on 28 September 2000, the Delhi High Court ordered the registration of all eligible voters. This order, too, was flouted. Till date, not a single Chakma or Hajong has been included in the electoral rolls. Subsequently, the PUCL and CCRCAP filed a contempt petition (CWP 537 of 2001) before the Delhi High Court. The case is continuing.

The Central Government has often asserted that the Chakmas and Hajongs have a legitimate claim to Indian citizenship. As a member of the Opposition, the current Minister of Home Affairs, L K Advani, was exceptionally critical of the delay in granting citizenship and related rights and privileges to the Chakmas and Hajongs. He raised the issue in Parliament on several occasions. During his own tenure as Minister of Home Affairs, however, he has failed to get the Arunachal Pradesh government to comply with constitutionally binding judicial orders and directives from the Ministry of Home Affairs.

In December 1995,a Committee headed by the Prime Minister of India was constituted to look into the problem. This was followed by the formation of a sub-committee headed by the Home

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1 . Under Section 3(1)(a) of the Indian Citizenship Act 1955, every person born in India on or after 26 January 1950 and before 1 July 1987 is a citizen of the country.

Minister. On 6-7 March 1999, Home Ministry officials representing the sub-committee visited the Chakma and Hajong inhabited areas and submitted their report, containing specific recommendations, to the Home Minister. The Home Minister is yet to take any action on these recommendations.

The State Government has been steadily dismantling the basic social infrastructure in Chakma and Hajong settlements, rendering the communities even more vulnerable. All persons legally resident in India are entitled to ration cards if their income falls below a specified amount. In October 1991, the State Government discontinued the issuance of ration cards to the Chakmas and Hajongs, many of whom live in extreme poverty. In September 1994 the State Government began a campaign of closing schools, burning them down, or relocating them, effectively denying the Chakmas and Hajongs the right to education, now a fundamental right.

In 1999, the NHRC appointed a Special Rapporteur to investigate the plight of the Chakmas and Hajongs and the implementation of the Supreme Court judgement. Until today, no steps have been taken by the NHRC.

The CCRCAP has made various representations to the NHRC, urging it to take measures including the filing of a contempt petition for implementation of the Supreme Court judgement. The NHRC is yet to intervene.

Victims of human rights violations must, more often than not, go through a long and tortuous legal process before they get a ruling in their favour, if at all. The NHRC's disregard of the Supreme Court directions in this case not only raises doubts about its credibility, but also unnecessarily prolongs the victims' long-drawn struggle for justice. Its unwillingness to take action does not augur well for the protection of human rights in India.

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CIVIL AND POLITICAL RIGHTS

Written statement* submitted by Human Rights Advocates International, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *0202010372*

ENG

1. Human Rights Advocates deplore and condemn the terrorist actions of September 11th and all acts of terrorism. In response to the aftermath of the terrorist acts of September 11th, Human Rights Advocates, an NGO with Category II Consultative Status with ECOSOC, submits the following statement on arbitrary detentions in the United States ("U.S.") and possible military tribunals for defendant's suspected in the bombings.

Views of Human Rights Advocates regarding arbitrary detentions

2. The U.S. must continue to protect the civil liberties of all Americans regardless of ethnic and religious diversity.

3. More than 600 people, mainly of Middle Eastern descent are in federal custody. On December 6th, 2001 Attorney General John Ashcroft disclosed that 563 individuals were in custody for immigration violations, while another 60 on federal criminal charges.1 They are secretly being moved from place to place and are limited in personal contact. Detainees held on immigration charges are not entitled to federal public defenders and must hire attorneys or find pro bono attorneys. Most will not be freed until cleared on all suspicions leading to their arrest, though lacking representation and unaware of the reasoning for their detention.2

4. Attorney representation, a civil right proves difficult for most detainees. Many are held without information of their whereabouts and wrongdoings. Many are unable to meet with attorneys. While Attorney General Ashcroft promised to make sure that Immigration and Naturalization Services ("I.N.S") inform individuals of their rights to counsel it has proven difficult. Many attorneys listed on flyers distributed to detainees do not handle immigration matters, thereby unaware of the expediency of certain matters, while other telephone numbers listed are misprinted.3 With hundreds detained, and such few attorneys made available, Attorney General Ashcroft's hopes go unfulfilled. Furthermore, information regarding detainees held on suspicion of terrorist activity are held secret, thereby denying any attention by counsel or legal analysts to their situations.

5. Secret detentions violate legal rights and civil liberties. Concerns include: arbitrary and prolonged detentions, including lack of timely judicial review; violation of procedural rights, including denial of timely access to counsel and impediments of communication between detainees and counsel; physical and verbal abuse of detainees, denial of medical attention; abusive interrogation practices to name a few. Human Rights Watch's request for visitation rights of detainees held in New Jersey and New York prison have constantly been denied. Names of such detainees have not been revealed, where they were being held, who was being held without charges, who had legal counsel, and how many were being held as material witnesses. These violations go against international laws and I.N.S.'s own detention standards.

6. One example reported in the New York Times Magazine is of Dr. Al Bader al-Hazmi.4 On 12 September 2001 FBI agents raided the home of al-Hazmi arresting him under suspicions of

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1 Darlen Superville, Associated Press, *Lawyers Say Detainees Held in Legal Limbo*, S.F. CHRON, Jan. 4, 2002.
2 Id.
3 Id.
4 Deborah Sontag, *Who is this Kafka That People Keep Talking Mentioning?*, N.Y. TIMES, 2001 (Magazine), at 57.

relations to terrorists sharing his last name. Detained for 13 days, al-Hazmi was subjected to continuous interrogation and one incidence of violence, unaware of his identification as a suspect. Suspicions the government acted upon were al-Hazmi's Saudi descent, his common Arab last name, phone calls received from a bin Laden, his trip to San Diego for a course on radiology and his recent trips to Boston and Washington for medical courses.5 Shackled at the hands and feet, al-Hazmi was transported with other suspicious detainees to New York City for further interrogation and released on the 13th day and escorted back to his home. Publicly humiliated in his community and the world, the US government simply offered what came close to a public apology.

7. Another reported example is of Tarek Mohamed Fayad.6 Arrested at a gas station, for violating a student visa, Fayed, an Egyptian dentist, was moved from one detention center to another and sent across country to New York City.7 It took lawyers one month to locate their client. As of 4 January 2002 Fayad still remained in a detention center and faces deportation, although the FBI has cleared him of terrorist involvement.

8. The Patriot Act passed by Congress further allows the Department of Justice ("DOJ") to detain non-citizens suspected of terrorism without charge for seven days. 8This is only subject to limited judicial review, allowing indefinite detention of those "certified" as terrorists to be stripped of all legal rights. The DOJ further issued a series of rules without public or congressional debate that go beyond provisions authorized by Congress in the Patriot Act. Additional violations by the U.S. government include holding of detainees incommunicado, denial of information pertaining to their arrest, questionable interrogation practices, and denial of legal counsel all together.

Views of Human Rights Advocates regarding use of military tribunals

9. The President of the United States issued an executive military order on November 13th authorizing military trials of criminal defendants for "violations of the law of war". The President declared that the order was implemented primarily to protect the United States and its citizens from further terrorist's attacks.

10. The Order states military tribunals will not necessarily abide by principles of law nor by rules of evidence as recognized in the trial of criminal cases in the U.S. district courts because such compliance would be impracticable. Individuals subject to this order are any non-citizens who are members "of the organization known as Al-Qaida"; who has "engaged in, aided or abetted, conspired to commit, or prepared to commit acts of international terrorism, that have or are intended to have adverse effects on the citizens, national security, foreign policy or economy of the United States"9.

11. The Presidential order bypasses all fundamental principles of law and justice found in the U.S. Constitution and international law on several grounds.10

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5 Id.
6 Superville, *supra* note 1.
7 Id.
8 The Patriot Act, 107th Congress, H.R. 3162, October 24, 2001.
9 Joan Fitzpatrick, *The Constitutional and International Invalidity of Military Commissions Under the November 13, 2001 "Military Order"*.
10 *Tribunals Threaten Principles of Justice*, Amnesty Now, Winter 2001-2002, at 9

12. First, the proposed defendants cannot be subject to a military tribunal because their criminal action does not fit the legal definition of war crimes. Defendants can only be tried for crimes of war if committed in the context of either an international or internal armed conflict between two or more states. In the current situation, no armed conflict of any kind exists.11 Common Article 2 of the 1949 Geneva Convention defines international conflict as "armed conflicts in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right to self-determination". There is no international armed conflict in this situation because the U.S. and its battle against a foreign terrorist network satisfies no part of this definition. Article I of the Protocol Additional II of 1977 defines internal armed conflict as a state's fight "between its armed forces and dissident armed forces or other organized armed groups". No internal conflict exists because the September 11th attacks did not create a situation of internal armed conflict inside the U.S.

13. Secondly, the attacks on the World Trade Center do not constitute war crimes and therefore cannot be subject to military tribunals. The proposed defendant's terrorist actions did not occur in the context of an armed conflict between two states. Both the Al-Qaida organization and the Taliban government are non-state entities. Al-Qaida is a network spread across the international arena and its members derive from various nationalities. The U.S. did not consider the Taliban regime wielding State authority. The Secretary of State even refrained from adding Afghanistan onto the list of state sponsored terrorism because they do not consider the Taliban holding state authority in that country.12 The U.S is not at war with the State of Afghanistan but rather with a criminal network and an unrecognized regime. The U.S. is fighting a metaphorical war against non-state organizations with individuals consisting of various nationalities.13 Because there is no direct conflict between states, the terrorist actions do not constitute war crimes and cannot be tried by military tribunals.

14. The Military Order would also be in direct violation of the International Covenant on Civil and Political Rights (ICCPR) treaty.14 Article 4 of the treaty contains several "derogation" clauses that set out rules to govern the suspension of rights during a state of emergency that threatens the life of the nation. First, the present terrorist actions do not threaten the life of the nation. Second, the treaty further states that measures taken in derogation of a right to a fair trial are strictly limited and largely forbidden. The trials envisioned by the Presidential Order strip the non-citizens of fundamental fair trial rights to such an extent that they reach beyond the scope the treaty. The military tribunals follow no set standards, they follow no precedent, and they follow no guidelines that would guarantee a fair trial to the proposed defendants.15 Rather they will be composed of ad hoc rules, the determination of which will occur at some future time.

Human Rights Advocates recommends that the Commission to the Working Group on Arbitrary Detention and the Special Rapporteur on Torture to examine the situation of detainees in the U.S. Further, the commission should request that the U.S. and other countries fighting terrorism follow international law to dispense criminal justice.

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11 Joan Fitzpatrick, *The Constitutional and International Invalidity of Military Commissions under the November 13, 2001 "Military Order"*.
12 Joan Fitzpatrick, *The Constitutional and International Invalidity of Military Commissions under the November 13, 2001 "Military Order"*.
13 Id.
14 Id.
15 Id.

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COMMISSION ON HUMAN RIGHTS
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INTEGRATION OF THE HUMAN RIGHTS OF WOMEN AND THE GENDER PERSPECTIVE: VIOLENCE AGAINST WOMEN

Written statement* submitted by Human Rights Advocates International, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

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GE. * 2 0 0 2 0 1 0 3 7 4 *
ENG

Trafficking in Women and Children

The Problem:

1. The traffic in women and children has been described as "trade in human misery."1 Many victims are forced into prostitution through physical brutality and torture. Those who rebel against their exploiters are starved, whipped, burnt, cut, or locked up.2 They lose their personal freedom, are cheated of their earnings, and are forced to work in degrading or life-threatening situations. 3 They are vulnerable to extreme exploitation and abuse because they are abducted, coerced, tricked or sold into situations from which they cannot escape and cannot control.4 They are denied the most basic human rights, often their right to life.

2. Trafficking continues to flourish despite numerous international and domestic efforts to stop it. Internationally, an estimated one to four million women and children are trafficked each year.5 Trafficking is now considered the third largest source of profits for organized crime, behind only drugs and guns, generating billions of dollars annually.6

3. Trafficking affects nearly every country. In the classic pattern of trafficking, victims are procured from their home country and transported to an unfamiliar environment, often in another country. For example, Eastern Europe and the countries of the former Soviet Union have become the main source of trafficked women to Western Europe, particularly Italy, Germany, France, the Netherlands, Greece, and Austria.7 Western Europe is also a destination area for victims from Africa and Latin America.8 Southeast Asia, specifically China, Burma, the Philippines, Cambodia, Thailand and Vietnam are sources of victims sent to the United States, Australia, Western Europe, the Middle East, and Japan.

The Cause:

4. Trafficking, like any trade, can be analyzed under general economic theory in terms of supply and demand components.

   - "To supply" is "to make available for use."9 Traffickers are suppliers because they make

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1 *Trading in Misery: Where Women and Children are Easy Victims*, THE STATESMAN (INDIA), March 30, 2001.
2 Susan Feanne Toepfer & Bryan Stuart Wells, *Worldwide Market for Sex: A Review of International and Regional Legal Prohibitions Regarding Trafficking in Women*, 2 MICH. J. GENDER & LAW 83, 87 (1994).
3 Gillian Caldwell, Steven Galster & Nadia Steinzor, *Crime and Servitude: An Expose of the Traffic in Women for Prostitution from the Newly Independent States*, presented at an international conference on "The Trafficking of NIS Women Abroad", November 3-5, 1997 (visited Jan. 15, 2001) http://www.globalsurvival.net/femaletrade/9711russia.html
4 Shelly Case Inglis, *Expanding International and National Protections Against Trafficking for Forced Labor Using a Human Rights Framework*, 7 BUFF. HUM. RTS. L. REV. 55 (2001).
5 Francis T. Miko and Grace Park, *Trafficking in Women and Children: The U.S. and International Response, Congressional Research Service Report 98-649C* (May 10, 2000) http://usinfo.state.gov/topical/global/traffic/crs0510.htm.
6 *Id.*
7 *Id.*
8 *Id.*
9 WEBSTER'S NINTH NEW COLLEGIATE DICTIONARY, 1186 (Mirriam-Webster 1990)

the victim available for use by others as a prostitute or mail order bride.

- "Demand" is "a willingness or ability to purchase a commodity or service." 10 In some sense, traffickers are demanders because they initially purchase the victim, but they are better described as suppliers because their purpose is to profit by selling the victim to others. The willingness of men to pay for prostituted women is the demand because these men are the end users. 11

5. The demand for commercial sex is crucial in motivating traffickers to procure victims. In Germany, they exact up to $30,000US from each trafficked woman or child for her purchase price and travel expenses.12 In addition, the traffickers extort exorbitant sums daily from trafficked women and children in mandatory fees for room and board, pimping, and doctor's and lawyers' services.13 The demand for commercial sex pays for the traffickers' profit.

6. Trafficking exists to meet the excess demand for commercial sex workers.

   -Women generally do not volunteer to enter the commercial sex industry. A survey of over 1000 Ukrainian women and girls seeking jobs abroad showed that none were willing to take a job in the "in the commercial sex industry."14 Even after the job titles were cloaked in euphemisms, such as "hostess" or "dancer," only the youngest, and perhaps most naïve, of the women were willing to take the jobs.15

   -If there were a sufficient supply of willing prostitutes to meet the demand for commercial sex, traffickers would not have a job. Traffickers use deception and coercion to procure women because even those in difficult circumstances would not voluntarily enter the situations into which they are trafficked. Many women and children are tricked into prostitution by offers of legitimate jobs, which she finds, upon arrival, is only a cover for prostitution.16 Others are kidnapped or sold into prostitution by their families.17

7. Reducing demand is crucial to any strategy to reduce trafficking. The rise of drug use in the U.S. despite the "War on Drugs" campaign illustrates the shortcomings of strategies focused exclusively on supply. 18 In contrast, U.S. education programs aimed at demand have reduced adult smoking by twenty-eight percent from 1965 to 1987. 19 A San Francisco "school for johns" is an example of an education program that addresses the demand for

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10 *Id.*
11 *See* Donna M. Hughes, *Men Create the Demand; Women Are the Supply: Lecture on Sexual Exploitation*, (visited Jan. 15, 2001) http://www.uri.edu/artsci/wms/hughes/demand.htm#_ftn1.
12 Donna M. Hughes, *The "Natasha" Trade: The Transnational Shadow Market of Trafficking in Women*, J. INT'L AFF., Spring 2000 at 625.
13 *Id.*
14 *Id.*
15 *Id.*
16 Isabelle Talleyrand, *Military Prostitution: How the Authorities Worldwide Aid and Abet International Trafficking in Women*, 27 SYRACUSE J. INT'L L. & COM. 151, 158 (2000).
17 *Id.*
18 See Eric Grant Luna, *Our Vietnam: The Prohibition Apocalypse*, 46 DEPAUL L. REV. 483, 518 (1997).
19 *Id.*

trafficked victims.20 This program "has kept virtually all of the men from becoming repeat offenders."21

8. The role of military personnel in perpetuating the traffic in women and children illustrates the close connection between demand and trafficking.

   - Extensive patronization of brothels by military personnel has contributed to the demand for prostitution. For example, the demand by U.S. military personnel for commercial sex during the Vietnam War era played a key role in the development of the international sex tourism industry.22 Even today, red light districts catering to servicemen are located near almost every U.S. military base in the United States, Germany and Okinawa.23 The Los Angeles Times reported that U.N. peacekeeping troops in Mozambique encouraged prostitution by buying sex from children as young as twelve and fourteen years old.24 These relatively wealthy soldiers, serving in one of the poorest countries in Africa, reportedly caused a "publicly perceptible increase in prostitution."25 It has also been alleged that in Zagreb, U.N. troops often asked local women on the streets how much they cost, and that some refugee women were coerced into sexually servicing U.N. troops in order to receive aid. 26

   - The demand by military personnel for commercial sex supports trafficking because many of the sex workers they use were trafficked into prostitution.27 Evidence indicates that many sex workers that served U.S. soldiers stationed in Honduras in the 1980's were kidnapped and brought to the brothels by Honduran officials.28 Others became so deeply indebted to the Honduran men who supplied their minimal food and housing that they were never able to pay off their debt and regain freedom.29 In the Philippines, sex workers who serviced soldiers stationed at military bases were recruited using false

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20 Kristen Wiebe, *The International Sex Trade: With the Many International, Regional and Domestic Instruments Addressing Trafficking of Persons for Sexual Slavery, Why Does the Trade Continue to Florish?*,(April 2001)(on file with the *University of San Francisco International Human Rights Clinic*), citing Brad Knickerbocker, *Prostitution's Pernicious Reach Grows in the U.S.*, CHRISTIAN SCIENCE MONITOR, Oct. 23, 1996.

21 *Id.*

22 Elizabeth Rho-Ng, *The Conscription of Asian Sex Slaves: Causes and Effects of U.S. Military Sex Colonialism in Thailand and the Call to Expand U.S. Asylum Law*, 7 ASIAN L. J. 103 (2000). See also Nancy Beyer, *The Sex Tourism Industry Spreads to Costa Rica and Honduras: Are These Countries Doing Enough to Protect Their Children From Sexual Exploitation*, 29 GA. J. INT'L & COMP. L. 301 (2001).

23 Talleyrand, *supra* note 16 at 154.

24 *Id.* at 156-57, citing Stanley Meisler, *Prostitution Report Accuses UN Troops in Mozambique*, L.A. TIMES, Feb. 26, 1994, at A11.

25 *Id.*

26 Talleyrand, *supra* note 16, at 157, citing Catharine A. MacKinnon, *Rape, Genocide, and Women's International Human Rights*, 17 HARV. WOMEN'S L. J. 5, 7 (1994), citing a Letter from Natalie Nenadic to Katherine MacKinnon, author, (October 13, 1992)(on file with the *Harvard Women's Law Journal.*)

27 Talleyrand, *supra* note 16, at 158.

28 *Id.* at 159., citing CYNTHIA ENLOE, THE MORNING AFTER: SEXUAL POLITICS AT THE END OF THE COLD WAR 119 (1993).

29 *Id.*

promises of high pay.30 As in Honduras, the Philippine sex workers were forced to remain in the sex industry by debts for their housing.31

- On some occasions, military personnel have reportedly contributed directly to the trafficking problem. Some U.S. veterans stayed in the Philippines after their base closed to work as procurers of young women for the sex tourism and military prostitution industries.32 Others founded mail order bride agencies.33 Identical incidents in Thailand indicate that some of the investors and managers of Thailand's brothels were Thai military officers.34 In Kampuchea, 22,000 UNTAC troops reportedly created a prostitution industry by recruiting truckloads of Vietnamese women and driving them into Cambodia.35

9. The World Bank, through its lending policies, has indirectly supported the demand for trafficked victims.36 For example, after the Vietnam War, the World Bank helped develop Thai tourism policies that permitted the proliferation of sex tourism in Thailand.37

Current Law

10. No international instrument in force addresses demand. The Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others38 obligates states parties to take action "for the prevention of prostitution."39 The Convention on the Elimination of All Forms of Discrimination Against Women40 recommends that all states take appropriate measures to end the trafficking of women, but does not define appropriate measures. The Convention on the Rights of the Child obligates states to protect children from sexual exploitation and abuse. 41 None of these instruments refer to demand.

11. In the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Protocol)42, the international community has, for the first time, recognized the need to address demand. Article 9, paragraph 5 of the Protocol would obligate states

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30 Talleyrand, *supra* note 16, at 159, citing SISTER MARY SOLEDAD PERPINAN, MILITARISM AND THE SEX INDUSTY IN THE PHILIPPINES, IN WOMEN AND VIOLENCE 150 (Miranda Davies ed., 1994).
31 *Id.*
32 Talleyrand,*supra* note 16, at 155, citing Enloe, *supra* note 28, at 151 and ANNE-MARIE CASS, SEX AND THE MILITARY, GENDER AND VIOLENCE IN THE PHILIPPINES 210 (1992).
33 Donna R. Lee, note, *Mail Fantasy: Global Sexual Exploitation in the Mail-Order Bride Industry and Proposed Legal Solutions*, 5 ASIAN L.J. 139, 160 (1998).
34 Talleyrand, *supra* note 16, at 155.
35 *Id.* at 156.
36 Rho-Ng, *supra* note 22 at 110-11.
37 *Id.*
38 2 U.S.T. 1997, 98 U.N.T.S. 101.
39 Susan Feanne Toepfer and Bryant Stuart Wells, *The Worldwide Market for Sex: A Review of International and Legal Prohibitions Regarding Trafficking in Women*, 2 MICH. J. GENDER & L. 83, 97, (1994).
40 G.A. Res. 34/180, U.N.GAOR Supp. No. 46, at 193, U.N. Doc. A/34/180 (1981).
41 Toepfer, *supra* note 40 at 97.
42 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention Against Transnational Organized Crime United Nations Convention Against Transnational Organized Crime, Advance copy (visited Jan. 15, 2001) http://www.uncjin.org/Documents/Conventions/conventions.html

parties "to adopt or strengthen legislative or other measures, ... to discourage the demand that fosters all forms of exploitation of persons."43 As of January 15, 2002, only four countries have ratified the Protocol. An additional thirty-six countries must ratify before it enters into force.

12. Domestic law also fails to cure demand. Domestic laws often undermine the protections afforded to victims under international law by deporting and penalizing trafficked women for immigration and prostitution violations.44 Even where domestic laws are adequate, other factors prevent their enforcement. For example, some law enforcement officials in developing nations need to supplement their income by relying on financial incentives from traffickers to overlook their activities.45 On a larger scale, some economies have come to depend on income from industries that rely on the labor of trafficked victims. Sex tourism accounts for a large part of the $4 billion spent by tourists in Thailand.46

Recommendations:

13. HRA urges the Commission to request that national governments:
    - focus on reducing demand from consumers;
    - continue current efforts to assist supplying countries in alleviating conditions that contribute to trafficking; and
    - ratify and implement the Protocol domestically.

14. HRA urges the Commission to request that the United Nations and national governments
    - study the contribution of their military personnel to the demand for commercial sex; and
    - implement programs to reduce the impact of this demand on trafficking.

HRA urges the Commission to request that the World Bank and other lending institutions to consider the impact of their programs on trafficking.

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43 The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the Convention Against Transnational Organized Crime (visited Jan. 15, 2001) http://www.uncjin.org/Documents/Conventions/dcatoc/final_documents_2/convention_%20traff_eng.pdf

44 Janie Chuang, *Redirecting The Debate over Trafficking in Women: Definitions, Paradigms, and Contexts*, 11 HARV. HUM. RTS. J. 65, 97 (1998).

45 Christopher M. Pilkerton, *Traffic Jam: Recommendations for Civil and Criminal Penalties to Curb the Recent Trafficking of Women From Post-Cold War Russia*, 6 MICH. J. GENDER & LAW 221 (1999).

46 Tanya Kateri Hernandez, *Sexual Harassment and Racial Disparity: The Mutual Construction of Gender and Race*, 4 J. GENDER RACE & JUST. 183, 201 (2001).

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 13 of the provisional agenda

RIGHTS OF THE CHILD

Written statement* submitted by Human Rights Advocates International,
a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *200201037 6*
ENG

The Juvenile Death Penalty is Prohibited by Customary International Law and Jus Cogens.

1. Human Rights Advocates (HRA) supports the work of the Special Rapporteur on extrajudicial, summary, or arbitrary executions to abolish the juvenile death penalty. HRA submits the following updated information on juvenile offender executions.

2. International law clearly prohibits the juvenile death penalty, which is the execution of persons who were younger than 18 years old at the time of the crime. It has been two years since the Sub-Commission on the Promotion and Protection of Human Rights affirmed that the prohibition of the juvenile death penalty is customary international law. (The death penalty in relation to juvenile offenders, Resolution 2000/17, adopted Aug. 17, 2000. E/CN.4/Sub.2/RES/2000/17 (2000).) The Sub-Commission noted that several Human Rights Commission Resolutions confirm this customary international law: Question of the Death Penalty, Resolution 1999/61, adopted April 28, 1999, E/CN.4/RES/1999/61 (1999); The Question of the Death Penalty, Resolution 2000/65, adopted April 27, 2000, E/CN.4/RES/2000/65 (2000). Not only does the HRA support these Resolutions by the Commission, but HRA also agrees that the prohibition against executing juvenile offenders has become customary international law. Customary international law prohibiting the juvenile death penalty is comprised of both: (1) state practice, which is evidenced by the long term, wide spread compliance by many nations; and (2) opinio juris, in that nation states believe that the law is not merely desired, but mandatory and required by international law. Both state practice and opinio juris evidence the customary international law prohibiting the juvenile death penalty. Additionally, the HRA considers that this customary international law has risen to the level of a jus cogens norm.

3. First, the practice of states all over the world indicates a practice against executing juvenile offenders. Over time, the practice of nations shows that the juvenile death penalty has become prohibited almost completely. In the last 10 years there have only been six countries, other than the United States, that executed juvenile offenders: Democratic Republic of the Congo (1 in 2000), Iran (6: 3 in 1992, 1 in 1999, 1 in 2000, 1 in 2001), Nigeria (1 in 1997), Pakistan (2: 1 in 1992, 1 in 1997); Saudi Arabia (1 in 1992), and Yemen (1 in 1993). These countries, that are reported to have executed juvenile offenders, since 1991, have since either abolished the practice, acknowledged that such executions were contrary to their laws, or denied that they have taken place. HRA especially welcomes the changes made recently in Pakistan. Not only was legislation implemented, which raised the death penalty eligibility age to 18 years old, but in addition, legislation was passed commuting the sentences of approximately 100 juvenile offenders previously on death row. We also welcome the progress that the Democratic Republic of the Congo (DRC) has made toward complying with the international community in halting the execution of juvenile offenders. In the year 2001, when five juvenile offenders were sentenced to death by the Military Order Court, the executions were stayed and the sentences commuted following appeals from the international community. We hope this is an indication of a new and permanent policy even though there was a reported execution of a 14 year old boy in 2000. We further welcome the statement made last year by the government of Iran, at the Commission on Human Rights, denying that executions of juvenile offenders actually do take place. However despite that statement, Mehrdad Youssefi, was reportedly executed on May 29, 2001 in Iran. He was just 16 years old at the commission of the crime. Despite the few deviations from the norm, almost every country in the world has demonstrated long term, wide spread compliance with the prohibition against executing juvenile offenders.

4. The United States is the most egregious violator of the prohibition against the juvenile death penalty. Although international law clearly renders juvenile offenders ineligible for the death penalty, the United States has maintained this practice since 1976. In the last 10 years the United States has executed more juveniles than any other country with a total of 14 since 1991. In 2000, four juveniles offenders were executed: two in Virginia and two in Texas. Last year another juvenile was executed in Texas, Gerald Mitchell. The state of Texas alone has accounted for more than half of the juvenile offenders executed in the U.S. since 1976 and currently has 31 more juveniles on death row. We were pleased to see that the state court in Texas did stay the execution of Napoleon Beazley, another juvenile offender following international concern. Hopefully the Beazley case is an example of more permanent change to come.

5. Second, opinio juris is comprised of numerous treaties and pronouncements by international bodies. The following treaties prohibit imposition of the juvenile death penalty: International Covenant of Civil and Political Rights (ICCPR); Convention on the Rights of a Child (CRC); Geneva Convention Relative to the Protection of Civilian Persons in Time of War; American Convention on Human Rights; and American Declaration of the Rights and Duties of Man. Also, resolutions by the Sub-Commission on Human Rights, the commission on Human Rights, the Economic and Social Council and the General Assembly oppose the imposition of the juvenile death penalty.

6. Furthermore, HRA considers that this customary international law has risen to the level of jus cogens. Under Article 53 of the Vienna Convention (hereinafter Vienna Convention), a jus cogens peremptory norm is Aa norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted and which can be modified only by a subsequent norm of general international law having the same character.@ The Vienna Convention on the Law of Treaties provides that a norm attain jus cogens status when it is (1) of general international law; (2) accepted by the States as a whole; (3) immune from derogation; and (4) modifiable only by a new norm of the same status. All four elements are satisfied by the international consensus against the juvenile death penalty. First, as stated above, the prohibition of the juvenile death penalty is general international law because almost every country in the world denounces the practice evidenced by the numerous treaties which prohibit it. Second, there is a near unanimous acceptance of the prohibition of the juvenile death penalty which is clear when compared to the prohibition against torture in international law: Every country of the world has accepted the prohibition against torture, yet it has been reported that torture and ill treatment occurred in over 150 countries since 1997. As for the juvenile death penalty only two countries executed juveniles in 2001 (US and Iran) and Iran, in recognition that their practice is an anomaly in the international community claim that the statistics are false. Third, the prohibition is non-derogable. Article 4 of the ICCPR states there shall be Ano derogation@ from Article 6, which prohibits the juvenile death penalty. Fourth, there is no emerging norm that contradicts the current norm. Prohibition of the juvenile death penalty has been universally accepted by all but a few nations. Accordingly, prohibition of the juvenile death penalty is a jus cogens norm from which no country is allowed to deviate.

7. HRA recommends:

-That the Commission request an advisory opinion that the juvenile death penalty is a violation of international law and that the states not yet in compliance officially cease the practice.

-That the Commission encourage remaining countries that are in violation of the prohibition of executing juveniles for which there is almost universal adherence to comply with international norms relating to the abolition of the juvenile death penalty.
-That the remaining countries be required to submit annual reports to the Special Rapporteur of extrajudicial killings outlining their efforts towards prevention of juvenile offender executions and abolition of the practice altogether. HRA asks for specific reassurance from Iran and the United States, the only two countries to have executed a juvenile offender in 2001, that they are making efforts to discontinue the practice completely.
- That the Commission encourage all states to cooperate with the Special Rapporteur.

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 14 (a) of the provisional agenda

SPECIFIC GROUPS AND INDIVIDUALS: MIGRANT WORKERS

Written statement* submitted by Human Rights Advocates International, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 0 3 7 8 *
ENG

Violations of Migrant Workers Rights

1. There are over 150 million migrants and refugees worldwide.[1] Migrants are present in virtually every sector of the economy; however, they continue to be an unrecognized group and are highly vulnerable to violations of basic rights. Their numbers will continue to grow as receiving countries continue to entice workers with high wages.
2. Migrants risk their lives to arrive in receiving countries. Border policies of both sending and receiving nations result in great danger, and often in death, by forcing migrants into dangerous areas. Additionally, bodies lie undiscovered and unidentified in border areas, leaving families to wonder what has become of migrants.
3. Migrants successful in arriving in receiving countries are exposed to inhumane treatment therein. Large numbers of migrants, including children, are employed in agriculture and exposed to dangerous pesticides, resulting in short and long-term health effects and in death. This statement will focus on the right to life of migrants on the borders of nations and the right to health of migrants and their exposure to pesticides.

Border Deaths and Unidentified Bodies

UNITED STATES

4. Despite increases in border resources, the most recent General Accounting Office report on border enforcement found that militarization of border operations has not deterred illegal migration. Instead, the Immigration and Naturalization Service (AINS@) continues to make record numbers of arrests along the U.S.-Mexico border.[2] INS operations have also shifted migrant traffic from urban crossing points to remote desert areas increasing the number of deaths.
5. The INS estimates that 1,013 migrants died crossing the U.S.-Mexico border between 1997 and 2001.[3] The Mexican Foreign Relations Office, however, reports that over 1,800 migrants have died in this time frame. In 2001, 375 migrant deaths were reported along the border.[4] These numbers are conservative, however, as no one knows how many bodies lie undiscovered.
6. In the meantime, the INS budget increased and border patrol agents doubled, while employer sanctions dropped 97%.[5] In 2000, the number of employer fines was 178 compared to 7,115 fines in 1998.[6]
7. Grupo Beta, established by Mexico to protect migrants on their way to the U.S., is understaffed and ill equipped. Beta agents have installed drums of water at strategic border points to help keep migrants alive.[7]

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[1] *International Migration, Racism, Discrimination and Xenophobia*, International Labour Organization, August 2001.

[2] *INS' Southwest Border Strategy: Resource and Impact Issues Remain After Seven Years*, United States General Accounting Office, August, 2001.

[3] Id.

[4] Claudia Smith, California Rural Legal Assistance Foundation, October 31, 2001 Press release.

[5] *INS' Southwest Border Strategy: Resource and Impact Issues Remain After Seven Years*, United States General Accounting Office, August, 2001.

[6] Id.

[7] James F. Smith, *Mexico's Grupo Beta Tries to Make Life Safer for Migrants*, Los Angeles Times, June 17, 2001.

8. In the region recording the highest number of border deaths, 200 unidentified migrants are buried in the local cemetery.[8] Though coroners' offices try to identify these bodies through use of INS fingerprint records, these records only contain information on migrants that have been previously caught.[9]

MEXICO

9. Migrants on the Southern border are assaulted by bandits, robbed by corrupt police officers, or abandoned by smugglers. Many are also dying. The number of deaths along the border rose to 136 in 2000, up from 29 the previous year. Guatemala, El Salvador and Honduras report that over 260 migrants died in 2000.[10]
10. Recently a program was established to return Central American migrants back to their home countries, rather than the Guatemala border. This could force migrants to undertake more lethal border crossings in the dense jungle bordering the countries.

CUBA

11. U.S. policy towards Cuba results in increased trafficking and in large amounts of Cubans trying to reach Florida. The U.S. intercepted 739 Cubans at sea by November 2001.[11] On November 20, 2001 U.S. officials found a capsized speedboat thought to have been carrying 30 Cuban migrants who were being smuggled to the U.S. No bodies were found. In 1998, 14 people died and in 1994 about 40 people died due to boats sinking.[12]

EUROPE

12. In Western Europe 300,000 to 500,000 migrants arrive yearly via the Straits of Gibraltar.[13] The number is much higher than that of the United States. The Straits have been called the largest mass grave in Europe, with deaths resulting from drowning, burns brought on by soaking in a toxic mix of saltwater and gasoline, and boats being hit by tankers and ferries sailing through the busy Straits.[14] Between 1997 and 2000, over 3,000 migrants died crossing the Straits.[15] In 2001, over 13,000 migrants were intercepted entering Spain, doubling the previous year=s cases. Casualties have also increased. In Algeciras, a southwestern port, there is a public cemetery where hundreds of unidentified migrants are buried. Police have successfully identified about 50 bodies.[16]

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[8] Claudia Smith, California Rural Legal Assistance Foundation, October 31, 2001 Press Release.

[9] Ben Fox, *Immigrants come to Anonymous End at Deadly Stretch of Border with Mexico*, North County Times, May 29, 2001.

[10] Ginger Thompson, *Mexico's Open Southern Border Lures Migrants Headed to U.S.*, The New York Times, August 5, 2001.

[11] David Gonzalez, *Boat Found as 30 Cubans are Missing*, The New York Times, November 21, 2001.

[12] Id.

[13] Anton La Guardia, *Trade in Human Misery Worth 8 Billion Pounds, Afghan Refugees are Small Part of a Huge Global Problem*, The Daily Telegraph (London), August 30, 2001.

[14] Paul Harris, *A 1000-mile Trek for Better Life Ends in Death on the Beach*, The Observer, April 15, 2001.

[15] Id.

[16] Sinikka Tarvainen, *Immigrants to Spain Brave Death to Fulfill Their Dream*, Deutsche Presse Agenteur, September 30, 2001.

13. In both England and Ireland migrants are smuggled in trucks and have suffocated to death. In June 2000, 54 Chinese migrants suffocated to death in a truck entering England.[17] On December 8, 2001 the bodies of eight migrants were found in a shipping container in Wexford.[18]
14. Eurotunnel is trying to shut down the Red Cross refuge in Sangattte, France, which has become a staging post for migrants headed for England. Four migrants have died and a dozen maimed. In July of 2001, 808 migrants were caught crossing the tunnel. On December 26, 2001, over 500 migrants were caught storming the tunnel.[19]

AFRICA

15. Niger is the new hub where West African migrants converge. Traffic is considered legal and vital to the economy. Lorries packed with 100 or more migrants set out openly from bus stations. Police are corrupt and receive a portion of the smuggling profits. Migration has also caused increased xenophobia in countries like Libya, where in 2000 Libyans murdered 100-500 Africans and burned down the Niger embassy.[20]

16. On February 26, 2001 the Libyan army found 40 migrant survivors in the desert. On May 1, 2001, 140 bodies were found in a truck.[21]

17. The trip to Europe can take up to two years and routes are tortuous and varied. Many migrants walk the journey, even attempting to cross the Sahara. Others die or fall victim to robbers or smugglers and many bodies are never found in the desert.[22]

INDONESIA & AUSTRALIA

18. In October 2001, 374 people drowned in the Java Sea while trying to reach Australia.[23] In December 2000, 160 people drowned off the coast of Australia in a similar incident.[24] In April 2000, more than 250 migrants were feared drowned after three boats went missing between Indonesia and Australia.[25]

SOUTH KOREA

19. In December 2001, the bodies of 25 Chinese migrants were dumped into waters near the southern port of Yosu. The migrants suffocated to death in a crammed fish hold without ventilation and were later dumped overboard.[26]

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[17] Calum Macleod, *Where the Bodies Come From*, The Independent, April 15, 2001.

[18] Brian Lavery, *Irish Police Find 8 People Dead and 5 Sick in Cargo Container*, The New York Times, Sunday, December 9, 2001.

[19] Donald G. McNeill, Jr., *500 Asylum Seekers Try to Dash Through Channel Tunnel*, The New York Times, December 27, 2001.

[20] Id.

[21] Ale Bensaad, *Sahel: Caravan of Despair*, Le Monde Diplomatique, September 2001.

[22] Paul Harris, *A 1000-mile Trek for Better Life Ends in Death on the Beach*, The Observer, April 15, 2001.

[23] Seth Mydans, *Survivors Tell of Many Dead in Sea Disaster Off Indonesia*, The New York Times, October 24, 2001.

[24] Patrick Barkham, *Search For 160 Asylum Seekers Feared Drowned Off Australia*, December 14, 2000.

[25] Id.

[26] *South Korea Apologizes for Deaths of Chinese Illegal Immigrants*, Agence France Presse, October 10, 2001.

EXPOSURE TO PESTICIDES

20. Many migrants take jobs in the agricultural sector, where jobs are plentiful and often reserved for them. These jobs pose some of the most serious health hazards to migrants, exposing them to extremely toxic pesticides. Many laws that govern pesticide exposure do not adequately protect migrants. Additionally, employers oftentimes violate these laws. Children are also exposed to pesticides at an alarming rate both as workers and through their parents contact with pesticides.

21. Exposure to pesticides can cause acute and long-term effects. Acute effects include rashes, vomiting, excessive sweating, dizziness, headaches, muscle pains and cramps, eye irritation, dying back of nerves resulting in loss of motor function, paralysis and muscle atrophy, neurobehavioral effects, and respiratory difficulty. The long-term effects associated with pesticide exposure include cancer, birth defects, and damage to the kidneys, liver and nervous system. Additionally, breast-feeding mothers have been found to carry large amounts of pesticides in their breast milk. [27]

22. Chronic effects of pesticide exposure have not yet been conclusively researched, and even less is known about the combined effects of different pesticides and effects on children and unborn children.[28] Additionally there is little information on the numbers of migrants are employed in agriculture in many countries.

23. RECOMMENDATIONS

24. Human Rights Advocates recommends that the Commission:

- Renew the mandate of the Special Rapporteur.

- The Commission should continue to work toward saving the lives of migrants by asking the Special Rapporteur to:

  - Continue to visit troubled border regions.

  - Encourage coordination between nations and organizations that search for deceased or disappeared migrants and identify steps countries can take to help identify bodies discovered on borders.

  - Identify steps the United Nations can take to help sending countries stem the flow of migrants to receiving countries. Special attention should be paid to smuggling and countries= role in preventing or promoting this illicit economy.

  - Promote and encourage coordination among governments of sending and receiving countries to combine lifesaving and risk reduction programs with efforts to reduce smuggling.

- With respect to right to health in working conditions:

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[27] Id.

[28] *Pesticides: Improvements Needed to Ensure the Safety of Farmworkers and Their Children*, United States General Accounting Office, March 2000.

- Seek recognition among countries on the danger of pesticides and encourage research on the effects of pesticides and exposure of migrants to pesticides.

- Encourage treatment, education and proper equipment for migrants handling pesticides.

- Seek the elimination of pesticides endangering the health and well being of migrants.

- Recommend enforcement of stiffer penalties for growers that violate the right to health and safety of migrants. Encourage strict regulations that monitor field entry for fields recently sprayed.

- Encourage creation of a worldwide certification system for farms that do not expose workers to dangerous pesticides.

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RACISM, RACIAL DISCRIMINATION, XENOPHOBIA AND ALL FORMS OF DISCRIMINATION

Written statement* submitted by the International Indian Treaty Council, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

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The United Nations (UN) held two World Conferences to Combat Racism, in 1978 and 1983, prior to the World Conference Against Racism (WCAR) at Durban, South Africa, on August 31 – September 7, 2001.

The 1978 World Conference to Combat Racism Declaration used the word "peoples" with reference to Indigenous Peoples without qualification or restriction on the word's implications under international law. The first World Conference declared:

21. The conference endorses the right of indigenous peoples to maintain their traditional structure of economy and culture, including their own language, and also recognizes the special relationship of indigenous peoples to their land, and stresses that their land, land rights and natural resources should not be taken from them.

Almost immediately, in 1983, the second World Conference to Combat Racism retrogressed. It failed to use the term Indigenous Peoples in its Declaration and Programme of Action relegating us to "populations." But it did repeat the statements recognizing Indigenous Peoples' special relationship to their lands and our right to our land and natural resources:

22. the rights of indigenous populations to maintain their traditional economic, social and cultural structures, to pursue their own economic, social and cultural development and to use and further development their own language, their special relationship to their land and its natural resources should not be taken away from them…

Indigenous Peoples took a great interest in the 2001 World Conference Against Racism and all of its preparatory process with the hope that its outcomes would finally begin a concrete UN contribution and commitment to the elimination of racial discrimination against Indigenous Peoples throughout the world.

On August 10, 2000, for example, over 200 Indigenous participants attended a preparatory consultation for the WCAR, hosted by the New York Office of the High Commissioner on Human Rights, on the 6th Commemoration of the International Day of the World's Indigenous Peoples. Indigenous participants recommended to the Preparatory Committee that the WCAR Declaration and Programme of Action use the word Peoples and no other words such as "populations" or "people" with reference to Indigenous Peoples.

Lamenting the fact that the above quoted principles from the first two World Conferences had not been observed, Indigenous Peoples recommended that the WCAR Declaration and Programme of Action recognize indigenous peoples' right to own and control their lands and territories and have a right not to be deprived of their means of subsistence or their natural resources, and that the WCAR should call upon the States to take effective measures to protect Indigenous Peoples' rights to their land, territories and natural resources.

This call was repeated many times over during the preparatory process: at the May, 2000 Prepcom II, by its Indigenous Caucus; in November of 2000, by the Indigenous Initiative for Peace; and, the Intersessional working Group on the United Nations Draft Declaration on the rights of Indigenous Peoples, November, 2000.

Indigenous Peoples participants at the Americas Preparatory Conference to the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance, in Santiago de Chile on

3rd and 4th December 2000, adopted a Declaration calling for full recognition of Indigenous peoples as peoples, and recognition of indigenous peoples' rights to lands, territories and natural resources. Again, Indigenous Peoples meeting in Quito, Ecuador, in March of 2001, at a UN sponsored NGO Forum, also described racism in the Americas as an extension of colonialism, calling for the recognition of Indigenous Peoples as "peoples" and the recognition of indigenous systems of governance of their territories.

The Regional Meeting of Indigenous Peoples on the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance held at Sydney, Australia, February 2001, again called for the recognition of Indigenous Peoples as Peoples, and in particular, their inherent right of self determination and of ownership and control of their territories and resources.

The Indigenous Peoples Millennium Conference, Panama City, May, 2001, gathered the emergent world wide consensus of Indigenous Peoples on recommendations to the WCAR. It considered the above cited gatherings as well as the Community Consultation on Racism, Racial Discrimination, Xenophobia and Related Intolerance, Kampala, Uganda, April-May, 2001; the Abokabi Declaration of Ghana, April 2001; and, the Kidal Declaration, of Mali, January 2001. Our consensus included the recognition of indigenous peoples as peoples within the full meaning of international law, and our right of self determination, as well as the reiteration of the first two World Conferences' recognition of the special physical and spiritual relationship between indigenous peoples and their lands, and that their lands and natural resources should not be taken from them.

The Santiago Indigenous Declaration, and the Sidney Report eloquently reflected the hopes and aspirations of the world's Indigenous Peoples for the WCAR, after 500 years of colonization, religious persecution and intolerance, genocide, racism and its contemporary manifestations, the militarization of Indigenous lands, the new and pernicious manifestation of environmental racism, the unabated loss of sacred lands and sacred sites, the consistent failures of governments to consult in good faith with Indigenous Peoples to secure their free and informed consent on matters that affect them, the alarming loss of their environments and major means of subsistence and the ever present threats to their survival.

It should be noted that these manifestations of racism are violations of civil, political, economic, cultural and social rights and fundamental freedoms already recognized as Indigenous rights under existing international standards.[1]

Keeping in mind the definition of racial discrimination in the CERD Convention, that of any distinction based on race or ethnic origin that has the purpose or effect of nullifying or impairing the recognition or enjoyment of other human rights, Indigenous Peoples were in global consensus that the refusal of States to use the word Peoples without restriction or condition, was itself racist. All that Indigenous Peoples asked of the WCAR was a reaffirmation of our already internationally recognized collective rights as Peoples, even as declared by the two prior World Conferences.

In spite of great participation by Indigenous Peoples throughout the process, and support from a great many States, upon the insistence of the North, led by the United Kingdom, the WCAR retrogressed, not only from the two prior World Conferences, but from existing international human rights standards.

With regard to the word "peoples," the WCAR Declaration defines the term "indigenous peoples,"

as a term that, "..cannot be construed as having any implications as to rights under international law."[2] The word "Peoples" in the Declaration is thus an empty word, devoid of meaning, devoid of rights.

Equally offensive to our human dignity is the retrogressive change made to the prior two World Conference Declarations with regard to land and natural resources:

> We also recognize the special relationship that indigenous peoples have with the land as the basis for their spiritual, physical and cultural existence and encourage States, wherever possible, to ensure that indigenous peoples are able to retain ownership of their lands and natural resources to which they are entitled under domestic law.[3]

The WCAR thus only "encourages" observance of our internationally recognized human rights and fundamental freedoms (even though human rights are legally binding obligations under international law) and only where "possible." Worse, internationally recognized rights to our lands and natural resources are subjected to domestic law, in effect approving State thefts of land that have been condemned by both the Human Rights Committee and the CERD Committee.[4]

Mr. Theo van Boven, a recognized United Nations expert on human rights of long and eminent standing, presently a member of the CERD Committee, examined the lack of commitment by European States (to which we would add the United States, and call this collectivity the "North") to the first two world conferences.[5] He pointed to the North's historical failure to fully participate in United Nations processes in the struggle against racism, "virtually ignoring United Nations standards and pronouncements on the issue" including CERD and the CERD Committee and its monitoring mechanisms.[6] He noted the North's historical resentment and disassociation from the UN over questions of racism:

> And, indeed, it is obvious that certain deeply rooted patterns of racism and racial discrimination are closely related to the colonial past with its white supremacy and that nefarious doctrines of racial superiority were preached and practiced by Europeans. In other words, many Europeans feel vulnerable and uncomfortable when they are taken to task on issues of racism and racial discrimination.[7]

Given the ever-present rapacious hunger for Indigenous lands and resources reflected by the WCAR Declaration, this "vulnerability and discomfort" is well justified even now.

As an additional reason for the failures of the first two World Conferences, Mr. van Boven also cited the North's use of the UN to promote its own perceived political interests.[8] The same may be said of the Durban WCAR.

The WCAR outcomes stressed a need to finally begin a good faith global struggle against racism. Its failures amply demonstrated to Indigenous Peoples that racism underlies all other denials of Indigenous human rights and fundamental freedoms even by the United Nations itself. We call upon all States of good faith to continue full United Nations activity against racism. A fully committed and concerted struggle against racism by the international community has yet to begin.

For all our relations.

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[1] See, ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent States; Article 1, International Covenant on Civil and Political Rights (and Human Rights Committee Concluding Observations on Canada's Fourth Periodic Report, applying Article 1 and the right of Self-Determination to Canada's Indigenous Peoples, CCPR/C/79/Add.105, 7 April 1999); Convention on the Elimination of All Forms of Racial Discrimination, Article 5, 5 (v) (and the CERD Committee's General Recommendation XIII 5; Concluding Observations by the Committee on the Elimination of Racial Discrimination: Australia. 19/04/200. CERD/C/304/Add.101. CERD/C/56/Misc.42/rev.3, 24 March 2000).

[2] World Conference Against Racism Declaration, paragraph 24, found at the Human Rights website, http://www.hchr.ch, visited January 10, 2002. Ironically this paragraph is found under the section entitled, "Sources, causes, forms and contemporary manifestations of racism, racial discrimination, xenophobia and related intolerance."

[3] Id, at para. 43.

[4] Human Rights Committee, Fn. 1; CERD Committee General Recommendation XXIII; CERD Concluding Observations, Australian report under Article 9 of the Convention, CERD/C/56/Misc.42/rev.3.

[5] United Nations strategies to combat racism and racial discrimination: past experiences and present perspectives, Background Paper prepared by Mr. Theodor van Boven, member of the Committee on the Elimination of Racial Discrimination, in accordance with paragraph 51 of the Commission resolution 1998/26.

[6] Id, para 2.

[7] Id, para 3.

[8] Id, para 3 (a) and (d).

UNITED NATIONS

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E/CN.4/2002/NGO/47
24 January 2002

ENGLISH ONLY

COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 5 of the provisional agenda

THE RIGHT OF PEOPLES TO SELF-DETERMINATION AND ITS APPLICATION TO PEOPLES UNDER COLONIAL OR ALIEN DOMINATION OR FOREIGN OCCUPATION

Written statement* submitted by the International Indian Treaty Council, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *0202010382*

ENG

The right of Self-Determination of Peoples is a collective right, the matrix of all other human rights and fundamental freedoms for Indigenous Peoples. No other human right or fundamental freedom can be enjoyed by Indigenous Peoples, individually or collectively, without the enjoyment of the right to self-determination.

In all discussions concerning Indigenous Peoples in all UN fora, including this Commission, since 1942, even the names given to institutions and fora devoted to Indigenous Peoples have been controversial with regard to the word "peoples." We now have the Working Group on Indigenous Populations, the Permanent Forum for Indigenous Issues, and the Rapporteur on Human Rights and Indigenous Issues.[1] We have been drained of humanity and are now "issues."

We are told by some States that to recognize Indigenous Peoples as Peoples, even in name only, would lead to the breakup of the State or challenge their territorial integrity. Yet since the inception of colonialism to this day, the integrity of Indigenous lands and territories are invaded and violated with impunity. Even on Indigenous lands and territories that are not taken outright, the integrity of Indigenous natural resources and means of subsistence more often than not are ruined beyond redemption primarily as a result of international and national development schemes. This, in spite of pronouncements applying Part 2 of Article 1 in Common to Indigenous Peoples by the Human Rights Committee, the treaty monitoring body of the International Covenant on Civil and Political Rights.[2]

It is difficult for Indigenous Peoples to see how human rights instruments, not only the Declaration on the Rights of Indigenous Peoples, but such documents as the World Conference Against Racism Declaration and Programme of Action, could establish any right of succession or independence. Such a result itself would be contrary to well established international norms.[3] All Indigenous Peoples have asked of this Commission and the United Nations system is the recognition of our rights, not the violation of the rights of others.

Some States tell us that the right of Self Determination can be understood only in the de-colonization process, and that this process is over. According to these States, there is no more colonization. But the reality for Indigenous Peoples, the same rape, the same ruin only began over 500 years ago. Under the so-called liberalization of trade, for example, it appears to many of us that the natural resources traded liberally by transnationals are for the most part liberally extracted from Indigenous lands, without consultation or consent. This liberalized theft of Indigenous Peoples' property is a violation of the rights listed in Article 1 in Common, including the pursuit of our own social, cultural and economic development and a denial of our means of subsistence.

There is no doubt that Indigenous Peoples and their lands, territories and natural resources continue to be colonized in the full sense of the word.

Under the United Nations Charter it is the Sacred duty of every state to observe and promote the right of Self Determination of Peoples.[4] If a State gravely and persistently violates the human rights and fundamental freedoms of a peoples, it may lose its legitimacy. Succession from the state may be the only way of restoring denied rights and freedoms to oppressed peoples. The territorial integrity of the State thus is fully in the hands of the State itself.[5]

> By accepting its obligations, including full respect for the right of self-determination with all of its consequences, and engaging in dialogue with all sectors of society, a government can maintain the territorial integrity of the state or ensure that peaceful change occurs beneficial to

the state.[6]

For many Indigenous Peoples, the States' "separation anxiety" in reality is based upon a fear that the racism and paternalism inherent in the colonialist practices of exchanging vast riches of natural wealth for trinkets and beads, will end. It may be uncomfortable or even unthinkable to change a 500 year-old relationship, but change, even to racism and colonialism must come. It is not a matter of an academic right to separate from the State. It is a matter of survival for Indigenous Peoples.

Members of the Commission, the Office of the High Commissioner recently sponsored a Workshop Indigenous Peoples, Private Sector Natural Resource, Energy and Mining Companies and Human Rights, in Geneva, 5 –7 December, 2001. Although all Indigenous participants welcomed the opportunity to dialogue with extractive industries and States as much needed, they also all spoke of a common history and experience with extractive industries and States, a common experience of gross exploitation, colonialism and racism.

Even now, it is a common experience of bad faith and gross exploitation, of the destruction of cultures, lifeways and spirituality, a disregard and disrespect for traditional authorities, massive environmental destruction and social and economic ruin. In some States, attempts to call attention to their predicament or to promote the enjoyment of human rights has provoked reactions by the transnational concerned and the State, of militarization, extrajudicial executions, arbitrary detentions and gross and massive violations of basic human rights and fundamental freedoms.

It is a continuing history and experience of bad faith, coercion, manipulation and ruin.

Indigenous Peoples are aware that that change has overtaken our communities. We are also aware that Indigenous Peoples have internationally recognized rights to decide our own futures, to determine our own pace of development based upon our own vision of sustainable development. Whatever change must occur should occur in a manner that preserves culture, language and life views, and be must directed toward the preservation of our lands and territories, our spirituality and values. Changes or pace of change that will destroy us cannot be unilaterally imposed upon us by extractive industries or the State. Existing human rights standards must be respected and observed as a matter of obligation.

In keeping with well established international human rights standards, States and Multinationals must consult with Indigenous Peoples in all matters that may affect them, including State and multinational promoted development schemes, keeping in mind that such consultations must be carried out in good faith and require the free and informed consent of the Peoples affected before they can take effect or be implemented.

"Good Faith" includes, *inter alia*, the respect for and direct participation by traditional Indigenous authorities in the consultation process and in the expression of consent, in accordance with the traditional decision-making processes of the Peoples affected. It also includes complete, timely and truthful information concerning the proposed measures to be taken, with the provision of resources to the Peoples affected that they may have the means with which to interpret all data, including scientific data. To the fullest extent possible, at every stage of the proposed measures, timely direct and honest information must be provided to the Peoples affected, of the negative effects of such measures on the Indigenous community's lands, environment and natural resources, and their means of subsistence.

In order that Indigenous Peoples and Communities consent to any development projects that concern their lands, natural resources, environment and means of subsistence, certain enabling conditions must be found, including, serious efforts to address imbalances of power between States and multi-nationals, and Indigenous Peoples, to ensure that Indigenous Peoples have the means and capacity to fully participate. Prior informed consent can be truly informed and consensual only if consultations do NOT guarantee that agreement will be reached in the end.

In other words, Indigenous Peoples have the right to say "no" to extraction or any other unsustainable developmental scheme that would destroy them. Indigenous Peoples are the owners of their lands, as guaranteed by international law. It is they who are sharing the benefit of their own lands and resources. It is they who are being destroyed.

It is the all too common experience of Indigenous Peoples that where the State or transnational cannot reach their desired ends in consultation with local traditional authorities, they either find another group or individual with whom to consult, or merely implement their plans without consultation. Even now the World Bank, in spite of recent changes in their new proposed rules on forced relocation of Indigenous Peoples, would ultimately allow such relocations without the consent by the Peoples affected.

Unilateral actions by States and transnationals can only lead to conflict. They are already leading to gross and massive violations of human rights, and the destruction of our Peoples. The United Nations and this Commission must continue to open spaces for dialogue on these matters to the end that solutions consistent with established human rights standards be explored and found.

The International Indian Treaty Council welcomes the High Commissioner's continuation of these workshops with States, interested United Nations Agencies, including UNCTAD and the ILO, as well as extractive industries, that human rights and fundamental freedoms be considered in the relationship between these actors and Indigenous Peoples.

The IITC also calls upon the recently appointed Rapporteur on human rights and Indigenous issues to prioritize the destruction of Indigenous lands, territories and the taking natural resources, as well as the forced relocation of Indigenous Peoples based upon State or industry sponsored development schemes, in the exercise of his most welcome and important mandate.

For all our relations.

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[1] Human rights and indigenous issues, Commission on Human Rights resolution 2001/57, E/CN.4/RES/2001/57, 24 April 2001 (Hereinafter, "the Resolution"), part 1(a) and (b).

[2] Concluding Observations of the Human Rights Committee on Canada's Periodic Report, CCPR/C/79/Add.105, 7 April 1999; Concluding Observations on Norway's Periodic Report, CCPR/C/79/Add.109, October, 1999.

[3] See, eg. The Declaration on Principles of International Law Concerning Friendly Relations and Cooperation Among States.

[4] United Nations Charter, Article 1.2, Purposes; Article 55; Article 56.

[5] John B. Henriksen, Implementation of the Right of Self-Determination of Indigenous Peoples, Indigenous Affairs 3/01, pp.9-10, International Work Group for Indigenous Affairs (IWGIA), Marianne Jensen ed., Copenhagen, 2001.

[6] Nobel Laureate Jose Ramos Horta, quoted in Henriksen, id, p. 10.

[7] The phrase "separation anxiety" is taken from Diane F. Orentlicher, Separation Anxiety: International Responses to Ethno-Separatist Claims, 23 Yale J. Int'l L. (1998).

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 10 of the provisional agenda

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement* submitted by the International Indian Treaty Council,
a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. * 2 0 0 2 0 1 0 3 8 4 *

ENG

For Indigenous Peoples, Economic, Social and Cultural Rights are inseparable and mutually interdependent. Traditional social systems, subsistence practices and cultures form an intricate web and a way of life that maintains the identity, social and physical health, and survival of Indigenous Peoples around the world.

The right of Self Determination as stated in Article 1 in Common of the two International Human Rights Covenants also upholds the right of all Peoples to freely pursue their economic, social, and cultural development, firming linking these interrelated rights.
Article 1 of the International Covenant on Economic, Social and Cultural Rights further affirms that in no case a People may be deprived of its own means of Subsistence.

However, around the world today, countless cultural sites, holy places, and traditional subsistence areas are under attack by outside economic interests motivated by profits. Their activities are supported by State policies and politicians who blatantly disregard the rights of the Indigenous Peoples who have lived in and used these areas since time immemorial. Many of these essential places have already been contaminated or destroyed, in direct violation of the cultural, social and economic rights of the Indigenous Peoples who they sustain and who are responsible for protecting them.

The Great Lakes ecosystem has provided First Nation Peoples of what is now the United States and Canada a spiritual, cultural, and economic way of life for countless generations. Ongoing hazardous and chemical waste discharges and toxic releases by transnational corporations into the waters and air of the Great Lakes have severely impacted the Indigenous Peoples of the Great Lakes ecosystem. Their traditional cultures, social and clan relationships and subsistence economies are based on fishing and gathering of traditional foods and medicines.

In many of traditional Indigenous communities of this region, families still eat the fatty material of the fish which now has very high concentrations of dioxin and other contaminants such as mercury. Government issued fish advisories demanding that women of childbearing age as well as children and elders discontinue their traditional fish eating practices is viewed by these communities as a form of cultural genocide since the relationship to the fish and food is tied to spiritual beliefs and traditional teachings as well as nutrition.

For the Oneida People of Wisconsin, many of the children no longer remember when fishing was a way of life for their people because of the severe industrial contamination of the waters and fish of Lake Michigan. Research on children and women who regularly eat large amounts of contaminated fish from Lake Michigan of the Great Lakes of North America resulting from industrial wastes, found observable and measurable behavioral effects and learning deficits passed from one generation to the next.

In the US and Canada, Mohawk Indian Peoples traditionally consume large amounts of fish as well. Mohawk women carry over 10,000 parts per million of PCB in their bodies that is passed on to babies in the womb and through breast milk.

Families are faced with abandoning their traditional social, cultural and economic practices based on a fishing way of life which has been passed from parents to children for countless generations, or face the contamination of their own children and destruction of their future generations.

Massive coal mining activities in the sacred Black Mesa area of the southwestern United States began in the late 1950's continue today, backed by US government legislation, at the expense of

the Human Rights of traditional Dineh and Hopis for whom Black Mesa has profound spiritual and religious significance.

The traditional Dineh and Hopis of Black Mesa have opposed mining of this sacred area, which is of fundamental importance to their cultural identity and ceremonial practices since Peabody Coal's mining activity began there in the mid-1960s. They continue to oppose it today.

Peabody Energy of St. Louis Missouri, USA, Peabody Coals' parent company and the world's largest coal producer, is in the midst of developing $7 billion worth of mine-mouth coal-fired power plants in the U.S.

The Peabody currently mine converts all its coal into a powder-water mixture (slurry) that is pumped 273 miles to Southern California Edison's Mohave Generating Station at Laughlin, Nevada. This activity uses approximately 3.3 million gallon of water a day pumped from the high desert aquifer, according to local sources. For about three decades Peabody has pumped this water from eight deep wells that also serve nearby Hopi and Dineh Indigenous communities. Local residents are reporting with increasing frequency that sacred ceremonial water, along with those used to provide water for families and livestock are diminishing and even disappearing.

For the traditional Dineh, Water is the sacred essence of and source of life, the Female Deity of the world, in the words of one traditional Dineh, Nebahe Kateney, whose family has continued to resist the forced relocation legislated by US Congress to make way for expanded coal mining in the area. "She is given the most ultimate respect not only when drank but when she is approached at a stream whether It be a brook or a river."

"Water is Great among the traditional Dineh of Big Mountain because the geography of Black Mesa has two canyons: the Blue Canyon (or Moencopi Wash) and the Wide Ruin Canyon. These two canyons with ali its natural springs represent the Energy Flows of The Resting Male Mountain and The Resting Female Mountain. Where the two Gender Entity's heads nearly meet is where the current Peabody Coal mines are located. Where the feet of these two Spirit Entities is where the confluence of the Wide Ruin and Blue Canyons are located. It is said that their feet rest upon this "Y" shaped help support their resting Beings.

"These represent Life of Earth and Sun as they combined its energy to create all living things. These represent Man and Woman whom, according to these Supreme Laws, will dwell upon these lands to make the Life for the People. Life means the vegetations, the medicine, the wild berries, the natural tobacco, the big and small game, and a traditional lodge with its fireplace. Water Spirits of Black Mesa and Big Mountain means that the Supreme Law is for the Dineh to always continue to make Offerings of Precious Stones and Corn Pollen to all of its Sacred Springs. Today, the ancient Chants that go with the Offerings to the summit of Big Mountain or to its Sacred Springs recite the stories of such times of creation.

"If Peabody Western Coal Company's mining operation continue and is not made accountable for its part in the forcible Relocation policies then, the rest of society of will only have plenty of electrical energy for the growing cities and industries. There will be no more Life of vegetation or wildlife. The natural medicine and foods will be forever contaminated and destroyed. The Sacred, natural springs are drying up due to the mining operation's extraction of massive amounts of an ancient aquifer that lies 1500 feet below the aboriginal lands of the traditional Dineh and Hopis.

Lastly, we would like to provide one more tragic example in the United States of the devastating results of unchecked economic greed causing irreparable and irreversible harm to a traditional culture of an Indigenous Nation. Since the early 1980's Pegasus Gold, a Canadian multinational corporation, operated the largest open pit cyanide heap leach gold mine in North America directly adjacent to the reservation lands of the Gros Ventre Indian Nation in Montana USA, within the territories recognized under their treaty with the US government.

Until it closed in 1998, the Pegasus mine emitted mine tailings containing cyanide which poisoned the ground water and streams flowing into the reservation. It also completely destroyed the Gros Ventre Indian Peoples' most sacred mountain, the source of their religious visions and medicine plants for countless generations. This sacred mountain where the ceremonial leaders had sought spiritual inspiration to guide their People since time immemorial, is now a desolate tailings pile.

This harm is irreparable. It cannot be repaired, neither by the corporation which made more than $300,000,000 from the mountains' destruction, nor by the US government which allowed it to be destroyed with no regard for the years of protests by the Peoples whose cultural rights were directly impacted, along with the health of their communities.

A traditional grandmother of the White Clay Society, Gros Ventre Indian Nation asked that the IITC present her question to the members of the Commission at this session. She asks you:
"Where can we go to pray now that our sacred mountain is gone?"

Who among the distinguished members of this Commission has an answer for her?
We ask you this in the name of human decency and the equal and inalienable rights of all Peoples.

For all our relations.

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 11 (a) and (e) of the provisional agenda

CIVIL AND POLITICAL RIGHTS, INCLUDING THE QUESTIONS OF: TORTURE AND DETENTION; RELIGIOUS INTOLERANCE

Written statement* submitted by the International Indian Treaty Council, a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

Torture and Detention

The International Indian Treaty Council and human rights organizations from around the world are profoundly disappointed that the final days of his administration, President Clinton failed to grant Executive Clemency for American Indian political prisoner Leonard Peltier.

President Clinton expressed his commitment to seriously consider clemency for Leonard Peltier. Religious, human rights, Indigenous and political leaders around the world voiced their strong support. But he apparently bowed to unprecedented pressure exerted on him by the US Federal Bureau of Investigation (FBI), which included inflammatory and inaccurate full page newspaper adds, meetings with the President, an FBI-staged demonstration in front of the White House, and a national call-in campaign.

The FBI has opposed all legal petitions for a new trial for Mr. Peltier, in which evidence supporting his innocence would be presented. In 1980 over 12,000 documents generated from the FBI case were released in accordance with the "Freedom of Information Act" adopted by the US Congress. These documents proved Mr. Peltier was innocent of the murders of two FBI agents who were killed in the June 26, 1975 shoot-out on the Pine Ridge Indian Reservation in South Dakota, USA. Despite the US governments' own admission that it could not prove who shot the agents, Mr. Peltier was denied a new trial and has spent nearly 26 years in prison for the agents' deaths.

The released documents revealed intensive FBI surveillance of American Indian Movement (AIM) activity on Pine Ridge prior to the shoot-out, as well as a plan to use "paramilitary operations" against AIM. During the three year period surrounding the shoot-out, scores of AIM members and traditional Lakotas were victims of beatings, drive-by shootings, and stabbings carried out by local vigilantes collaborating with the FBI. Many questions about FBI complicity in this violence remain unanswered.

Meanwhile, the US government continues to withhold over 6,000 full and 5,000 partial documents pertaining to this case, despite former President Clinton's executive order requiring the release of government documents with the passage of 25 years. These documents contain crucial evidence further supporting Peltier's innocence. They also provide additional information about the US governments' role in the repression of the American Indian Movement and in orchestrating Mr. Peltier's conviction by any means necessary, including falsifying extradition documents and ballistics reports, coercing testimony, and suppressing evidence.

Leonard Peltier, from Leavenworth Federal penitentiary, requested that IITC present his statement to the members of the Commission at this time: "What my case boils down to is not a dispute over facts or evidence, but rather, the FBI's desire to conceal the truth. What traditional Native people wanted were basic human rights: the right to self-determination, the right to practice our religion, safety from political violence, and access to resources in our own homeland. Rather than listening to us, we were criminalized. In order for America to progress and become a better nation, it must allow the full truth to be revealed and it must take steps to ensure that the abuses do not reoccur."

The IITC calls upon this Commission to utilize every mechanism at its disposal and within its mandate to call for full disclosure by the US government of information in this case. The IITC filed a complaint on behalf of Leonard Peltier to the Committee on Arbitrary Detention in 1997, but to date has received no response. We call upon the UN Committee on Arbitrary Detentions to

renew its active investigation into the shameful facts of this case, especially now that a domestic remedy has been denied. Justice for Indigenous Peoples of the world depends upon justice for Leonard Peltier.

The IITC also expresses our grave concern at recent news of intimidation and unjust imprisonment of indigenous Mapuche leaders, members of the organization *Consejo de Todas las Tierras* (CTT) Aucan Huilcaman, Manuel Santander, Margot Collipal, Adan Ayenao, Adrian Ayenao and Sergio Marillan. They were detained Temuco, Chile on November 29, 2001 for allegedly assaulting police officers during an unprovoked raid on their office on July 20, 2001. The Mapuche leaders reject these charges and maintain that they were the victims of a violent assault by police in which men and women were beaten and office equipment and files were confiscated without justification.

The IITC is concerned that the Indigenous leaders in custody will not be treated in full accordance with international human rights law and the Chilean constitution. The IITC has been informed that their imprisonment has been carried out under military laws dating back to the Pinochet dictatorship, and that there is a risk that they may be tried by military tribunal without recourse to normal channels of justice. IITC has also received reports that this action was instigated by powerful logging and forestry interests who oppose the Mapuche struggle to regain and defend their traditional lands.

Religious Intolerance

In 1999, the United Nations Rapporteur on Religious Intolerance Mr. Abdelfattah Amor reported to the Commission on Human Rights on the situation of Religious Intolerance in the United States, E/CN.4/1999/58/Add.1, citing many examples of religious intolerance impacting Indigenous Peoples in that country. To date, many of the situations addressed in this report continue unabated, and some have even worsened.

One example is the ongoing denial of religious freedom for Native American prisoners in the United States of America. This concern also was presented to the United Nations World Conference Against Racism, Racial Discrimination, Xenophobia and Related Intolerance in Durban South Africa in September 2001, by Mr. Lenny Foster, Board member of the International Indian Treaty Council. Mr. Foster is the Coordinator of the National Native American Prisoners Rights Advocacy Coalition, and spiritual advisor and Director of the Navajo Nation Corrections Project representing over 1,500 Native Americans incarcerated in 96 state and federal prisons in the US.

The IITC calls the attention of the members of the Commission to the following excerpts from his intervention:

"...I want to thank you for the opportunity to convey a serious concern about the denial of the religious and spiritual practices of the Native American Peoples who are incarcerated in the United States prison system. It is a primary human rights issue for Native American communities and Peoples because it affects the very essence of our cultural and spiritual beliefs...

"The United States government displaced many of our ancestors physically and spiritually. During that relocation, many of the traditional ways of spiritual and religious practices were repressed... However, a spiritual and cultural revival has developed in the past thirty years in which the Native

Americans have sought to regain their culture. This spiritual healing has seen the Peoples of all Tribal backgrounds embracing and returning to the roots of their respective spiritual and religious practices.

"...Traditional religious and spiritual practices such as the cleansing and purification ceremonies have proven to be very successful in positive changes in attitude, in behavior and personality... Having access to a traditional spiritual leader to provide instruction and teach the ceremonies is very important and has also been a successful approach. All of these therapies have to be done on a consistent basis.

"Long hair, worn in a traditional fashion for cultural and spiritual beliefs is also very important. The California state Department of Correction has recently implemented a haircutting policy for Native Americans and this racist practice is very detrimental to the spiritual and psychological well-being and contributes to severe depression. Equal access and use of sacred herbs and items such as sage, cedar, sweet grass mountain tobacco, and sacred items such as the Pipe, drum and gourd are very important to the traditional ceremonies.

"Also, there are Native Americans presently on Death Row, condemned to die and waiting to be executed... It is very important for a condemned person to be allowed to use the sweat lodge as a Last Rite request yet the various prison officials in California and Missouri have denied such requests.

"...The enforcement and compliance with existing laws, policies and statutes are not uniform. Lawsuits filed in the US to enforce existing laws have resulted in adverse decisions. Freedom of religion for Native American prisoners has depended upon the whim of individual prison officials.... These racist attitudes and racial discrimination should not be the basis for the arbitrarily and capriciously denying these basic human rights"

The cases presented by IITC under this agenda item each reflect the impacts of unequal and discriminatory application by states of international human rights standards with regards to Indigenous Peoples. Pervasive double standards in the practice of justice, human rights and due process by states, which in effect exclude Indigenous Peoples from full enjoyment of international as well as national laws and standards protecting civil and political rights, must no longer be tolerated by the world community.

We urge the Commission on Human Rights and in particular the Special Rapporteur on the Situation of Human Rights and Fundamental Freedoms of Indigenous People to address this ongoing grievous discrepancy in the application of international human rights norms and standards without further delay.

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COMMISSION ON HUMAN RIGHTS
Fifty-eighth session
Item 7 of the provisional agenda

THE RIGHT TO DEVELOPMENT

Written statement* submitted by the International Indian Treaty Council,
a non-governmental organizations in special consultative status

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[15 January 2002]

*This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

GE. *0202103E*

The UN General Assembly adopted the Declaration on the Right to Development nearly twenty-five years ago. Article 1 of the Declaration states that the right to development is an inalienable human right for all peoples "in which all human rights and fundamental freedoms can be fully realized." Article 1 also states that the full realization of the right of peoples to self-determination, and "full sovereignty over their wealth and natural resources," are fundamental to the right to development.

Article 1 of the International Covenant on Economic, Social and Cultural Rights also affirms that in no case a People may be deprived of its own means of Subsistence. Indigenous Peoples' cultural and spiritual relationships with the natural world are maintained through daily practice of subsistence hunting, fishing, farming and gathering. We have seen the world over that these fundamental relationships, on which Indigenous Peoples' food security, traditional development and cultural survival are based, are primary casualties of imposed development and resource extraction on their homelands.

This year we are preparing for the World Summit on Sustainable Development. Today we call upon member states of the United Nations states to recognize the fundamental and inalienable right of Indigenous Peoples to determine for themselves the processes and forms of development that are appropriate to their cultures and circumstances as a fundamental underpinning of their Right to Development.

The IITC thanks the United Nations Secretary-General for the observations contained in his recent report " Implementing Agenda 21" submitted to the second preparatory committee for the World Summit on Sustainable Development, E/CN.17/2002/PC.2/. The Secretary General notes in Section I, paragraph 4, that "major changes have occurred since UNCED in the unsustainable patterns of consumption and production which are putting the natural life support system at peril. The value systems reflected in these patterns are among the main driving forces which determine the use of natural resources." Many Indigenous Peoples would agree with his profound observation about the underlying problem and challenge.

The IITC calls upon this Commission to denounce the pervasive and ongoing violations of the Right to Development that negatively impact the lives of Indigenous Peoples, and threaten the viability and sustainability of all life. The globalized market economy prioritizes the exploitation, appropriation and extraction of natural resources, products and capital at the expense of environmental protection, and the human rights and self determination of the Peoples of the world.

Indigenous Peoples suffer disproportionately from a lack of corresponding mechanisms to safeguard our fundamental human rights in the face of imposed development. For example, forced removal is defined as a crime in Protocol II of the Geneva Conventions and is prohibited by that same universal standard in time of war and civil conflict. However, it is carried out around the world with impunity by states and corporations in the process of conducting mining, drilling, damming and deforestation activities.

The absence of universally agreed standards on the rights of indigenous peoples is a major obstacle in fully empowering indigenous peoples to play their mandated role in sustainable development. Their full enjoyment of the Right to Development requires legal recognition of rights to ownership and control of their lands, territories and natural resources on national and international levels. Sadly, this recognition has still not been achieved here at the United Nations.

As a result, Indigenous Peoples around the world are struggling, in many cases with little to no support, to defend their lives, community health, ecosystems, means of subsistence and sacred cultural relationships in the face of imposed development and political decision making in which their input is systematically ignored.

For example, the Gwich'in People of Alaska and Canada continue to be threatened by the "energy policy" proposed by US President George W. Bush and his Congressional allies who support oil exploration in the Arctic National Wildlife Refuge, the birthing place of the Porcupine Caribou herd which provides food security, and is the cultural and spiritual foundation for the Gwich'in. Oil development would violate the Gwich'in Peoples' human, cultural and subsistence rights, as well as their right to development which is based upon their fundamental and ancient relationship with the caribou.

In Colombia, "Plan Colombia" and its aerial herbicide application program designed by the United States and Colombian governments in the so called "war on drugs" to purportedly eradicate coca and poppy, is adversely impacting the indigenous health and the safety of their crops, livestock, water supply, and environment. Plan Colombia violates Indigenous Peoples' right to life, health, food, and property as well as the customary international right to a clean and healthy environment. Moreover, the United States and Colombia have withheld from the impacted Indigenous communities, as well as the general public, details about the exact ingredients being used, and their potential environmental and health risks.

Department of Heath Officials in the impacted regions and international NGO observers, confirm the incidence of severe health ailments after spraying occurred. Numerous credible accounts report that the spraying has resulted in the eradication of (among other legal crops) of yucca, corn, tomatoes, grass for livestock grazing, and in destruction of fruit trees, livestock and fish, resulting in the denial of means of subsistence in direct violation of International law.

The IITC calls upon the U.N. Commission on Human Rights to conduct a full health, human rights and environmental assessment of "Plan Colombia" and its aerial herbicide application program, and to urge the United States and Colombia to impose a moratorium on the program until such assessment is completed.

On December 13th, 2001 Mme. Ouachi-Vesely, United Nations Special Rapporteur On Transboundary Illicit Dumping of Toxic Wastes, visited the office of the International Indian Treaty Council in San Francisco and received testimony and documentation from Indigenous representatives from the Untied States, Alaska, Mexico and Guatemala.

One area of grave concern presented to the Rapporteur was the ongoing export of toxic chemicals from the United States as well as some European countries. Especially detrimental to Indigenous communities are agricultural pesticides and herbicides which have been banned for use in the US and European countries but are exported for use in Mexico and Guatemala with severe health and environmental impacts in Indigenous communities there.

This includes pesticides and other agricultural chemicals whose use has been banned in the exporting countries because of documented severe health impacts to those exposed, including cancer and birth defects. They are sold to farmers in Mexico and Guatemala without warning labels on the known or suspected health and environmental risks, or precautions for use.

We appreciate the Rapporteur's interest in this example of environmental racism in which economic profits again take precedence over the human rights of Indigenous Peoples and environmental protection for all Peoples on Earth. We look forward to her report to this session of the Commission, and to proving any assistance we can offer her efforts to shed further light on this insidious practice.

The IITC also appreciates the cooperation and partnership which has emerged between Indigenous Peoples and the Food and Agricultural Organization of the United Nations toward increasing the process of participatory consultation in the upcoming World Food Summit + 5. This represents a truly historic opportunity to increase participation of Peoples directly concerned with various aspects of this fundamental issue. These include: sustainable food security and food sovereignty; cultural rights and traditional food-related practices, land and water rights; subsistence rights (hunting, fishing and gathering); preservation of traditional food resources and habitats; health issues; genetically modified foods and bio-piracy; affects of resource extraction and toxic contamination; and access to adequate food as a basic human right.

The IITC urges the Commission to recommend that the Special Rapporteurs on the Right to Food and Right to Development, as well as the new Special Rapporteur on the situation of Indigenous Human Rights and Fundamental Freedoms, focus serious attention on the full range of cultural, social, economic, environmental, political and spiritual issues impacting the Right to Development and the interrelated Right to Food for Indigenous Peoples.

The IITC calls upon the World Summit on Sustainable Development in Johannesburg to allow for honest assessment, action-oriented discussion and full and equal participation by all Peoples, to address the forces that have caused backward rather than forward steps in achieving sustainable development over the last 10 years. These include globalization, privatization and the growing dominance and influence of industry within the United Nations and global governance.

Indigenous Peoples look forward to the next constructive phase of action towards achieving the sustainable development goals set out for the world community in 1992 by Agenda 21. We accept the responsibly of our participation on behalf of our Peoples and future generations, in a respectful partnership with other Peoples and Nations who share this Earth. The survival of all Nations and Peoples literally hangs in the balance. This very real urgency demands that all of us come to this table with utmost honesty, sincere political will, and a collective commitment to sacrifice short-term political dominance and economic gain for long term survival.

For all our relations.